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REPORT
106–302

FISHERMEN'S PROTECTIVE ACT AMENDMENTS

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

H.R. 1651

MAY 23, 2000.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

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MAY 23, 2000.—Ordered to be printed

Mr. MCCAIN, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany H.R. 1651]

The Committee on Commerce, Science, and Transportation, to which was referred the act (H.R. 1651), "An act to amend the Fishermen's Protective Act of 1967 to extend the period during which reimbursement may be provided to owners of United States fishing vessels for costs incurred when such a vessel is seized and detained by a foreign country, and for other purposes," having considered the same, reports favorably thereon with amendment and recommends that the act as amended do pass.

PURPOSE OF THE ACT

H.R. 1651, as amended, the Fishermen's Protective Act Amendments of 1999 has three titles. Title I provides an extension of current law from fiscal year 2000 to fiscal year 2003 so that reimbursement may be provided to owners of U.S. fishing vessels illegally detained or seized by foreign countries. Title II establishes a panel to advise the Secretaries of State and Interior on Yukon River Salmon management issues in Alaska and authorizes $3 million for fish stock restoration. Title III authorizes the Secretary of Commerce to acquire up to six new fishery research vessels and authorizes appropriations of $60 million in each of fiscal years 2002 and 2003 for the acquisition of the first two fishery research vessels.

BACKGROUND AND NEEDS

TITLE I—THE FISHERMEN'S PROTECTIVE ACT

The Fishermen's Protective Act of 1967 (FPA) was originally enacted in response to illegal seizures and detainments of U.S. fish-

ing vessels by the governments of a number of South American countries. At the time, the United States claimed only a 12-mile jurisdictional limit over fisheries resources, while seven South American countries claimed a 200-mile national jurisdiction. Since the United States did not recognize the jurisdiction of other countries beyond 12 miles, some U.S. vessels fished in areas of the Pacific Ocean they considered to be high seas. However, certain South American countries believed the U.S. vessels were encroaching upon sovereign waters. In 1967, Ecuador seized nine U.S. tuna vessels and Peru seized two U.S. vessels.

The FPA established a program under which the Secretary of State may reimburse fishermen for the fines and direct costs incurred from the illegal seizure and detention of a vessel by a foreign government. These payments are made out of the Fishermen's Protective Fund (Protective Fund), established under section 9 of the FPA. In addition, section 7 established the Fishermen's Guaranty Fund (Guaranty Fund). Vessel owners, through fee agreements with the federal government, pay fees into the Guaranty Fund, which serves as a type of insurance to recover the indirect costs resulting from illegal seizure and detention of commercial fishing vessels. This program was designed to cover lost income and the value of the fish caught and seized. The fees charged to fishing vessel owners under the Guaranty Fund more than doubled in 1985, when the Solomon Islands seized a tuna fishing vessel, the Jeanette Diane, and Brazil seized and detained a number of U.S. shrimp vessels, resulting in multimillion dollar payments from the Fund.

The Fisheries Act of 1995 (P.L. 104–43) amended the FPA to authorize the Secretary of State to make reimbursements from the Protective Fund to U.S. commercial fishing vessels that were charged by the Canadian government for use of the Inside Passage. The Inside Passage is a waterway located between Vancouver Island and mainland British Columbia. It is the traditional route U.S. fishermen travel between the contiguous United States and the Alaskan salmon fishing grounds to avoid dangerous conditions in the open ocean outside of the Passage. In June 1994 after negotiations failed between the United States and Canada on the Pacific Salmon Treaty, Canada began to impose a $1,100 transit fee on U.S. vessels using the Inside Passage. Canadian officials hoped the fee would induce the United States to return to the negotiations. The U.S. Administration regards collection of this fee as a violation of international law. Nevertheless, Canada has refused to reimburse the U.S. government for fees Canada has collected from U.S. vessels for Inside Passage transit.

The Protective Fund has an authorized appropriation of $3 million. In 1996 and 1997, 261 claims were filed against the Protective Fund and payments totaled approximately $290,000. Between 1989 and 1996, three reimbursements were made from the Protective Fund out of seven claims and no claims were made in 1998. Only one reimbursement from the Guaranty Fund has been made since 1987, totaling $186,000 for indirect costs resulting from the seizure of four vessels by the Costa Rican government. H.R. 1651, as amended, extends the current authorization in fiscal year 2000 to fiscal year 2003.

TITLE II—YUKON RIVER SALMON

The Yukon River is a major North American river, draining an area of approximately 328,000 square miles over its 1,980 mile length. Its headwaters are in British Columbia and the Yukon Territory, Canada. The river travels about 700 miles through Canada before it crosses the Alaskan border. In Alaska, it moves in a general westward direction for over 1,200 miles across the state to empty into Norton Sound in the Bering Sea. The river basin is not heavily populated or developed.

The Yukon River is an important habitat for Pacific salmon, an anadromous fish species that alternates its life cycles between fresh and salt water. Pacific salmon hatch and spend their early lives in freshwater streams, after one to three years migrate to the open ocean to mature, and then return back to the freshwater stream where they were originally hatched in order to spawn. Many of the Yukon River salmon travel the almost 2,000 mile length of the river to spawn in Canadian waters. The general lack of manmade barriers along the Yukon River, as compared to other more heavily engineered rivers, aids in the completion of their journey.

Salmon have historically played an important role, both culturally and economically, in Alaska. The Alaskan salmon fishery is a mixture of commercial, recreational, and subsistence fishing. Both state and Federal agencies have control over management of more than 25 different commercial salmon fisheries. However, because of the transboundary nature of the salmon resource, management is also negotiated with Canada.

U.S.-Canadian disputes over management and conservation of salmon stocks have occurred since the early 19th century. International agreements on salmon management were ratified in 1929 and 1957, but both countries had a number of concerns that were not resolved by the pacts. In 1971, the countries began to negotiate a new agreement, ultimately resulting in the signing of the Pacific Salmon Treaty in 1985.

The Pacific Salmon Treaty attempted to establish a framework under which the United States and Canada could bilaterally manage their shared salmon stock. After ten years of negotiations over the catch and long-term conservation of Yukon River salmon, the two countries reached an interim agreement in 1995. The United States implemented this agreement through the Fisheries Act of 1995. Title VII of that law created the United States section of the Yukon River Salmon Panel and a U.S. Advisory Committee.

The United States and Canada were each allotted six appointees to the panel. U.S. membership includes one person appointed by the Secretary of State, one appointed by the Governor of Alaska, and four other members that are nominated by the Governor of Alaska and selected by the Secretary of State. Additionally, the law allowed for the creation of an eight to twelve member Yukon River Advisory Committee to provide information and recommendations to the Panel. The Fisheries Act of 1995 also authorized $4 million a year, including up to $3 million a year for the Department of Commerce and Interior for survey, restoration, and enhancement activities that relate to Yukon River salmon.

Negotiations continued with the 1995 interim agreement in place, during which the countries attempted to reach a permanent or long-term agreement. However, the interim agreement expired in March 1998 without another such agreement. H.R. 1651, as amended, codifies the Yukon River Salmon Panel, established under the 1995 interim agreement, to advise the Secretary of State on Yukon River Salmon management, advise the Secretary of Interior on enhancement and restoration of the salmon stocks, and perform other activities that relate to the conservation and management of Yukon River salmon stocks. The reported bill also maintains the Yukon River Advisory Committee. If a permanent or long-term agreement is reached, H.R. 1651, as amended, allows for the continuation of the Panel and Advisory Committee under the terms of the new agreement.

H.R. 1651, as amended, authorizes $4 million a year for each of fiscal years 2000 through 2003. Up to $3 million of these funds can be used by the Departments of Commerce and Interior for survey, restoration, and enhancement projects related to Yukon River salmon. In addition, the reported act authorizes $600,000 for cooperative salmon research and management projects in the United States portion of the Yukon River drainage area that have been recommended by the Panel.

TITLE III—FISHERY INFORMATION ACQUISITION

Dependable research platforms are essential for conducting the fisheries stock assessment surveys necessary to monitor species abundance, recruitment, age composition, and their response to ecological change and fisheries pressure. Collection of such information is critical to the development of the regulatory regime governing commercial and recreational fishing. Without reliable information, the regulatory framework often lacks credibility.

In 1996, Congress passed the Sustainable Fisheries Act (SFA), the most substantial and comprehensive revision of the Magnuson-Stevens Fisheries Conservation and Management Act, the primary Federal law governing marine fisheries. To date, the National Oceanic and Atmospheric Administration (NOAA) and the federal fishery management councils are still attempting to implement the new requirements established by the SFA. Many of these new responsibilities and the resulting fishery management decisions depend on the survey data and other stock assessment information collected by NOAA's existing fishery research vessels (FRVs), some of which are nearing the end of their useful lives.

In FY 2000, the Administration requested $51.6 million to acquire the first of four new fisheries research vessels. The new FRVs will be designed to collect survey and stock assessment information in an efficient and effective manner. In addition, these vessels will be used to meet continuing obligations under the Marine Mammal Protection Act and the Endangered Species Act. The first new FRV was substantially funded in FY 2000. However, in FY 2001, the Administration only requested $8.3 million to continue the construction of the first new FRV. The Committee was disappointed that funding for the construction of the second new FRV was not included in the FY 2001 request. The Committee notes, however, that the FY 2001 request does propose funding for replacement of existing obsolete and deteriorating research vessels in the out years.

One new FRV has been proposed in each of FY 2002, FY 2003, and FY 2004.

The President's FY 2001 request also included $8 million to reactivate, convert, and upgrade the NOAA vessel Adventurous to support fisheries research activities. The Adventurous is a modern T-AGOS class vessel acquired from the Navy to be converted to meet marine mammal survey and high priority fisheries data collection requirements. NOAA plans to replace the Townsend Cromwell with the Adventurous. According to NOAA, the Townsend Cromwell is 35 years old and beyond its service life.

The Committee is hopeful that in FY 2002 the Administration will resume its commitment to meeting the nation's urgent fisheries data and information collection needs by fully funding the second new FRV. Further delays in this acquisition project will only exacerbate management problems associated with the substantial data and information shortfall the Committee has identified in its regional hearings on the reauthorization of the Magnuson-Stevens Act.

Perhaps the most compelling argument for vessel replacement needs is found in New England, which has experienced a crisis in the management of valuable cod and other groundfish stocks. As a result, the New England Fishery Management Council (Council) expends a considerable amount of time and energy on groundfish management, including consideration of stock biology as well as the ocean conditions that can influence differing rates of stock recovery. In fact, during the 1999 fishing season, the Council changed the fishing regulations five times in an attempt to appropriately manage and conserve the groundfish stocks. In the Council's view, these changes were necessary to meet SFA mandates. The Committee notes that this constantly changing regulatory climate is unfair to the small, family run businesses that support the affected fishing communities

To make matters more difficult, the Albatross IV, a 38-year old fishery research vessel, is the Northeast region's primary tool for conducting surveys of the fishery resources upon which these fishing communities depend. While the Albatross IV continues to collect the survey data necessary for management decisions for all Northeast fisheries stocks, its operations are increasingly less reliable. According to the Commerce Department, the deterioration of the Albatross IV has created an urgent need for a replacement vessel in the Northeast. The Committee agrees and further notes that this vessel's effectiveness in continuing its critical data collection functions cannot be guaranteed without prohibitively expensive and major repairs. One of the principal requirements of a standardized survey is minimizing the variables associated with collection of data. For that reason, the Northeast bottom trawl survey program has been conducted for close to 40 years using the Albatross IV almost exclusively, which has minimized the introduction of vessel-based variability in the survey data. In order to maintain continuity of the Northeast surveys, a replacement vessel is needed so that the required calibration with the Albatross IV can be performed before it is retired.

The Committee notes that maintaining the existing capability to collect this long time series of data and information on Northeast fish stocks is critical to rebuild and manage the Northeast ground-

fish stocks, as well as other important fish stocks in the North- and Mid-Atlantic. Furthermore, the new acoustically quiet vessel proposed by the Administration would be able to collect oceanographic and biological data necessary to support the growing need for multispecies management measures in New England. The vessel would also make available an expanded survey area, which could fill recently identified information gaps for species with ranges that go beyond the current survey scope.

H.R. 1651, as amended, authorizes acquisition of up to six new FRVs and authorizes appropriations of $60 million in each of FYs 2002 and 2003 for the acquisition of the second and third new FRVs. The Committee notes that several of NOAA's nine existing fisheries research vessels are becoming technologically obsolete and reaching the end of their useful lives. Consequently, NOAA's vessel replacement strategy should be implemented in an urgent needs-based manner.

During the Committee's Executive Session, two amendments were adopted, relating to the new FRV's. First, Senator Snowe and Senator Kerry offered an amendment which clarifies that $60 million would be authorized in each of FYs 2002 and 2003 for the acquisition of the second and third new FRVs. The House passed version authorized $60 million without designating the applicable fiscal year.

Second, Senator Lott offered an amendment which requires the Commerce Department to procure the new FRVs through full and open competition from U.S. shipbuilding companies. NOAA should utilize a best-value method for source selection to ensure that the contract award is made to that offer which is overall the most advantageous to the Government, considering all evaluation factors in the solicitation. The Committee reminds the Secretary of Commerce that the procurement must be conducted consistent with the authorization levels contained in the Snowe-Kerry amendment.

ATLANTIC BLUEFIN TUNA—USE OF SPOTTER AIRCRAFT

The Snowe-Kerry amendment referred to above also contained a provision relating to the use of spotter aircraft in the Atlantic bluefin tuna (ABT) fishery. H.R. 1651 was amended to include a new section which would prohibit the use of aircraft in the General and Harpoon categories of the ABT fishery.

Due to the wide ranging nature of bluefin tuna and other highly migratory species, management and conservation authority rests with the Secretary of Commerce, rather than the regional fishery management councils. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) established advisory panels to assist, advise and make recommendations to the Secretary during the development of management plans and plan amendments for highly migratory species.

In August 1998, the highly migratory species advisory panel (HMS AP) unanimously requested and advised (apart from three abstentions) that the Secretary, through the National Marine Fisheries Service (NMFS), prohibit the use of spotter aircraft in the General and Harpoon categories of the ABT fishery. However, in October 1998, when NMFS published the draft HMS fishery management plan (FMP), it did not propose to change the regulations relating to the use of spotter aircraft. Nonetheless, the agency indi-

cated that it would address the issue in a separate rulemaking prior to the start of the June 1, 1999 ABT season. On May 28, 1999, NMFS published a proposed rule to prohibit the use of spotter planes in the General and Harpoon categories. For reasons still unclear to the Committee, the Secretary never finalized this rule. Consequently, it is the Committee's view that the Secretary did not adequately address this issue prior to the start of the 1999 ABT season nor did the Secretary do so in a timely or meaningful manner at any time thereafter.

H.R. 1651, as amended, adopts the HMS AP recommendation and prohibits the use of spotter aircraft in the General and Harpoon categories. According to NMFS, such action is necessary in order to meet the goals and objectives of the HMS FMP. In fact, after a review of extensive public comment and guidance from the HMS AP, NMFS concluded that the status quo is unacceptable and that prohibiting the use of spotter aircraft would best address management concerns and ensure that the objectives of the FMP are met, consistent with the Magnuson- Stevens Act. The use of spotter aircraft to locate ABT can accelerate the catch rates and closures in the General and Harpoon categories. An accelerated catch rate in either category would have an adverse impact on the scientific objectives of the FMP and traditional fishing communities. For instance, it would undermine NMFS regulations designed to control effort in the General category. Moreover, the use of such aircraft is inconsistent with the reasoning behind the initial establishment of the Harpoon category, which is a weather-dependent, multiple catch fishery.

Upon enactment of this provision, the Committee directs NMFS to provide Atlantic tuna permit holders an appropriate period of time to change permit categories for calendar year 2000, if such permit holders so choose.

LEGISLATIVE HISTORY

Representative Young (R–AK) introduced H.R. 1651 on April 29, 1999, and it was referred to the House Committee on Resources. Reps. Faleomavaega (D–AS) and Saxton (R–NJ) were co-sponsors of the act. H.R. 1651 passed the House of Representatives on September 13, 1999 by voice vote.

On September 14, 1999, the act was received in the Senate and referred to the Senate Committee on Commerce, Science, and Transportation. On April 13, 2000, H.R. 1651 was considered by the Committee in an open executive session. The Committee ordered the act to be reported with amendments favorably.

SUMMARY OF MAJOR PROVISIONS

Title I provides an extension of current law from fiscal year 2000 to fiscal year 2003 so that reimbursement may be provided to owners of U.S. fishing vessels illegally detained or seized by foreign countries.

Title II establishes a panel to advise the Secretaries of State and Interior on Yukon River Salmon management issues in Alaska and authorizes $3 million for restoration of Pacific Salmon stocks.

Title III authorizes the Secretary of Commerce to acquire up to six new fishery research vessels and authorizes appropriations of

$60 million in each of fiscal year 2002 and fiscal year 2003 for the acquisition of the first two fishery research vessels.

H.R. 1651, as amended, also prohibits the use of aircraft in the General and Harpoon categories of the Atlantic bluefin tuna fishery.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 5, 2000.

Hon. JOHN MCCAIN,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1651, an act to amend the Fishermen's Protective Act of 1967 to extend the period during which reimbursement may be provided to owners of United States fishing vessels for costs incurred when such a vessel is seized and detained by a foreign country, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Hadley and Deborah Reis (for federal costs), and Jean Wooster (for the private-sector impact).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 1651—An act to amend the Fishermen's Protective Act of 1967 to extend the period during which reimbursement may be provided to owners of United States fishing vessels for costs incurred when such a vessel is seized and detained by a foreign country, and for other purposes

Summary: Assuming appropriation of the authorized amounts, CBO estimates that implementing H.R. 1651 would cost $136 million over the 2000–2005 period. The act would affect direct spending; therefore, pay-as-you-go procedures would apply, but CBO estimates that any such effects would not be significant. H.R. 1651 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no significant costs on state, local, or tribal governments. Any costs incurred by the state of Alaska to manage an agreement with Canada would be incurred voluntarily.

H.R. 1651 would impose a private-sector mandate, as defined by UMRA, on some vessel operators. CBO estimates that the cost of complying with the mandate would be well below the threshold established by UMRA ($109 million in 2000, adjusted annually for inflation).

H.R. 1651 would authorize the Fisherman's Guaranty Fund through fiscal year 2003, and would allow additional fee payments into that fund. Title II of the act would create a six-member Yukon River Salmon Panel to advise the Secretary of State regarding the negotiation of any international agreement with Canada concerning the management of certain salmon stocks. This title also would authorize the Secretary of the Interior to carry out projects to restore such salmon stocks and would authorize the appropriation of $4 million for each of fiscal years 2000 through 2003 for these purposes. Title III would authorize the Secretary of Commerce to purchase, lease, or charter up to six fishery survey vessels. For this purpose, the act would authorize the appropriation of $60 million for each of fiscal years 2002 and 2003.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1651 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					
	2000	2001	2002	2003	2004	2005
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Authorization Level	4	4	64	64	0	0
Estimated Outlays	3	4	25	46	34	24

Basis of estimate: For purposes of this estimate, CBO assumes that H.R. 1651 will be enacted during fiscal year 2000 and that the entire amounts authorized by titles II and III will be appropriated for each fiscal year. The authorization level for each of fiscal years 2000 through 2003 contains $4 million for salmon restoration and other activities authorized under title II. Fiscal years 2002 and 2003 authorization levels include an additional $60 million annually for the acquisition of fishery research vessels.

Title I of H.R. 1651 would authorize the Fisherman's Guaranty Fund through fiscal year 2003, allowing additional payments of fees into that fund. The Fisherman's Guaranty Fund pays owners of U.S. fishing vessels for certain financial losses if their vessels are seized by a foreign nation. Owners pay fees sufficient to cover the costs of these payments. The fund has a current balance of $2.8 million. However, no owners have applied to participate in the program in recent years, and the funds has paid only one claim since 1987. (That claim resulted in payments for four vessels totaling less than $200,000.) Thus, CBO estimates that any additional offsetting receipts from fees or spending for claims would not be significant.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending and receipts. Because H.R. 1651 would affect direct spending and receipts, pay-as-you-go procedures would apply, but CBO estimates any such effects would not be significant.

Estimated impact on state, local, and tribal governments: H.R. 1651 contains no intergovernmental mandates defined in the Unfunded Mandates Reform Act and would impose no significant costs on state, local, or tribal governments. Any costs incurred by the state of Alaska to manage an agreement with Canada regarding

salmon stocks originating from the Yukon River in Canada would be incurred voluntarily.

Estimated impact on the private sector: H.R. 1651 would impose a private-sector mandate, as defined by UMRA, on some vessel operators. CBO estimates that the cost of complying with the mandate would be well below the threshold established by UMRA ($109 million in 2000, adjusted annually for inflation).

The bill would amend the Atlantic Tunas Convention Act to prohibit vessel operators that hold federal boat permits in the harpoon and general categories from using aircraft to locate, catch, retain, or possess Atlantic bluefin tuna. Less than 1 percent of operators that hold those permits use such aircraft.

The vessel operators that use aircraft catch more Atlantic bluefin tuna compared with those that do not use such aircraft. Based on information from government and industry sources, under H.R. 1651, it is likely that the vessel operators prohibited from using such aircraft would have a reduction in their income because their total catch would be less. Moreover, some of their loss in income could be realized by other vessel operators not now using aircraft whose catch could increase. Current estimates of the size of the harpoon and general fisheries range from $10 million to $20 million annually. Consequently, CBO estimates that the net direct costs of the mandate to vessel operators in the affected fisheries would be well below the private-sector threshold.

Previous CBO estimates: On June 21, 1999, CBO transmitted a cost estimate for H.R. 1651, the Fisherman's Protective Act Amendments of 1999, as ordered reported by the House Committee on Resources on June 9, 1999. The CBO estimate for title I of the Senate version of H.R. 1651 is identical to our estimate for the House version of H.R. 1651. The House version of H.R. 1651, however, did not contain a private-sector mandate.

On July 20, 1999, CBO transmitted a cost estimate for H.R. 2181, the Fisheries Survey Vessel Authorization Act of 1999, as ordered reported by the House Committee on Resources on June 30, 1999. The provisions of H.R. 2181 and those of title III of the Senate version of H.R. 1651 are similar, but our estimates are different to reflect the fact that H.R. 2181 would authorize the appropriation of $60 million for five years instead of two, as in the Senate version of H.R. 1651.

Estimate prepared by: Federal Costs: Deborah Reis and Mark Hadley; Impact on State, Local, and Tribal Governments: Victoria Heid Hall; and Impact on the Private Sector: Jean Wooster.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

H.R. 1651, as reported, reauthorizes and extends the Fishermen's Protective Act and the Yukon River Advisory Panel. The reported act also authorizes NOAA to acquire new fishery research vessels

and prohibits the use of aircraft in the General and Harpoon categories in the Atlantic bluefin tuna fishery. The reported act would have little, if any, regulatory impact, but a few of acts provisions could impact some individuals and businesses, and the effect of these sections can be clarified as follows:

Section 401 of the reported act prohibits the use of aircraft in the General and Harpoon categories of the Atlantic bluefin tuna fishery. This section could have the effect of reducing business opportunities for bluefin tuna permit holders and aircraft pilots that might be currently available, but the reduction could only apply to less than one percent of bluefin tuna permit holders and aircraft pilots. Additionally, the Commerce Department advisory panel for highly migratory species unanimously recommended that the Department prohibit the use of such aircraft.

ECONOMIC IMPACT

As noted above, section 401 of the reported act could have an economic impact on some individuals and businesses. However, in addition to the advisory panel recommendation noted above, the use of aircraft in the General and Harpoon categories could have an adverse impact on traditional fishing communities and the scientific objectives of the federal management plan for bluefin tuna.

PRIVACY

The reported act will not have a significant impact on the personal privacy of individuals.

PAPERWORK

H.R. 1651, as reported, should not significantly increase paperwork requirements for individuals and businesses.

SECTION-BY-SECTION ANALYSIS

TITLE I—FISHERMEN'S PROTECTIVE ACT OF 1967

Section 101. Short title

This section of the act cites the short title of the reported act as the "Fishermen's Protective Act Amendments of 1999."

Sec. 102. Extension of period for reimbursement under Fishermen's Protective Act of 1967

This section of the reported act amends Section 7(e) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1977(e)) to extend current law from fiscal year 2000 to fiscal year 2003. It also makes technical changes.

TITLE II—YUKON RIVER SALMON

Sec. 201. Short title

This section cites title II of the reported act as the "Yukon River Salmon Act of 1999."

Sec. 202. Yukon River Salmon Panel

This section of the reported act establishes a Yukon River Salmon Panel and designates the criteria for appointment of U.S. members to the Panel.

Sec. 203. Advisory Committee

This section of the reported act establishes a Yukon River Advisory Committee and designates the criteria for appointment of members to the Advisory Committee.

Sec. 204. FACA exemption

This section exempts the Panel and any advisory committees created under section 203 of the reported act from the Federal Advisory Committee Act.

Sec. 205. Authority and responsibility

This section of the reported act designates the State of Alaska Department of Fish and Game as the responsible management entity for the U.S. for agreements with Canada regarding Yukon River Salmon stocks. It also authorizes the Panel to make recommendations that are advisory in nature to a number of federal and state entities.

Sec. 206. Administrative matters

This section of the reported act clarifies compensation, expenses, and treatment as federal employees for members of the Panel.

Sec. 207. Yukon River salmon stock restoration and enhancement projects

This section of the reported act authorizes the Secretaries of Interior and Commerce to carry out projects to restore or enhance salmon stocks originating in the Yukon River. This section also provides direction for carrying out such projects if there is an agreement in effect between the United States and Canada.

Sec. 208. Authorization of appropriations

This section of the reported act authorizes $4 million for each of the fiscal years 2000 through 2003 to carry out this title.

TITLE III—FISHERIES INFORMATION ACQUISITION

Sec. 301. Short title

This section cites the short title of the reported act as the "Fisheries Survey Vessel Authorization Act of 1999."

Sec. 302. Acquisition of fishery survey vessels

Subsection (a) of this Section authorizes the acquisition of up to six fishery research and survey vessels. Subsection (b) sets requirements for the capabilities of such vessels. Subsection (c) authorizes $60 million dollars in fiscal year 2002 and fiscal year 2003 for acquiring one vessel in each respective fiscal year.

TITLE IV—MISCELLANEOUS

Sec. 401. Use of aircraft prohibited

This section of the reported act amends section 7(a) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971e(a)) to prohibit the use of aircraft in the General and Harpoon categories in the Atlantic bluefin tuna fishery.

Sec. 402. Fisheries Research Vessel procurement

This section of the reported act requires the Secretary of Commerce to procure Fisheries Research Vessels through full and open competition from responsible U.S. shipbuilding companies irrespective of size.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the act, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

ATLANTIC TUNAS CONVENTION ACT OF 1975

SEC. 7. VIOLATIONS; FINES AND FORFEITURES; RELATED LAWS. [16 U.S.C. 971e]

(a) IN GENERAL.—It shall be unlawful—

(1) for any person in charge of a fishing vessel or any fishing vessel subject to the jurisdiction of the United States to engage in fishing in violation of any regulation adopted pursuant to section 6 of this Act; [or]

(2) for any person subject to the jurisdiction of the United States to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish which he knows, or should have known, were taken or retained contrary to the recommendations of the Commission made pursuant to article VIII of the Convention and adopted as regulations pursuant to section 6 of this Act, without regard to the citizenship of the person or vessel which took the [fish.] *fish; or*

(3) for any person, other than a person holding a valid Federal permit in the purse seine category—

(A) to use an aircraft to locate or otherwise assist in fishing for, catching, or retaining Atlantic bluefin tuna; or

(B) to catch, possess, or retain Atlantic bluefin tuna located by use of an aircraft.

(b) FAILURE TO FURNISH RETURNS, RECORDS, OR REPORTS.—It shall be unlawful for the master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to fail to make, keep, or furnish anycatch returns, statistical records, or other reports as are required by regulations adopted pursuant to this Act to be made, kept, or furnished by such master or person.

(c) REFUSAL OF REQUEST TO BOARD AND INSPECT VESSEL.—It shall be unlawful for the master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to refuse to permit any person authorized to enforce the provisions of

this Act and any regulations adopted pursuant thereto, to board such vessel and inspect its catch, equipment, books, documents, records, or other articles or question the persons onboard in accordance with the provisions of this Act, or the Convention, as the case may be, or to obstruct such officials in the execution of such duties.

(d) IMPORTATION OF INELIGIBLE SPECIES OR SPECIES UNDER INVESTIGATION.—It shall be unlawful for any person to import, in violation of any regulation adopted pursuant to section 6(c) or (d) of this Act, from any country, any fish in any form of those species subject to regulation pursuant to a recommendation of the Commission, or any fish in any form not under regulation but under investigation by the Commission, during the period such fish have been denied entry in accordance with the provisions of section 6(c) or (d) of this Act. In the case of any fish as described in this subsection offered for entry in the United States, the Secretary shall require proof satisfactory to him that such fish is not ineligible for such entry under the terms of section 6(c) or (d) of this Act.

(e) SANCTIONS.—The civil penalty and permit sanctions of section 308 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1858) are hereby made applicable to violations of this section as if they were violations of section 307 of that Act.

(f) FORFEITURE.—All fish taken or retained in violation of subsection (a) of this section, or the monetary value thereof, may be forfeited.

(g) APPLICABILITY OF OTHER LAWS.—All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a cargo for violation of the customs laws, the disposition of such cargo or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act.

FISHERMEN'S PROTECTIVE ACT OF 1967

SEC. 7. REIMBURSEMENT FOR SEIZED COMMERCIAL FISHERMEN. [22 U.S.C. 1977]

(a) AGREEMENT TO REIMBURSE FOR ACTUAL COSTS, CONFISCATION OR SPOILAGE OF FISH, AND LOSS OF INCOME.—The Secretary, upon receipt of an application filed with him at any time after the effective date of this section by the owner of any vessel of the United States which is documented or certificated as a commercial fishing vessel, shall enter into an agreement with such owner subject to the provisions of this section and such other terms and conditions as the Secretary deems appropriate. Such agreement shall provide that, if said vessel is seized by a foreign country and detained under the conditions of section 2 of this Act, the Secretary shall guarantee—

(1) the owner of such vessel for all actual costs, except those covered by section 3 of this Act, incurred by the owner during the seizure and detention period and as a direct result thereof, as determined by the Secretary, resulting (A) from any damage to, or destruction of, such vessel, or its fishing gear or other equipment, (B) from the loss or confiscation of such vessel, gear, or equipment, or (C) from dockage fees or utilities;

(2) the owner of such vessel and its crew for the market value of fish caught before seizure of such vessel and confiscated or spoiled during the period of detention; and

(3) the owner of such vessel and its crew for not to exceed 50 per centum of the gross income lost as a direct result of such seizure and detention, as determined by the [Secretary of the Interior,] *Secretary of Commerce,* based on the value of the average catch per day's fishing during the three most recent calendar years immediately preceding such seizure and detention of the vessel seized, or, if such experience is not available, then of all commercial fishing vessels of the United States engaged in the same fishery as that of the type and size of the seized vessel.

(b) DISTRIBUTION OF PAYMENTS ACCORDING TO COMMERCIAL FISHING PRACTICES AND PROCEDURES.—Payments made by the Secretary under paragraphs (2) and (3) of subsection (a) of this section shall be distributed by the Secretary in accordance with the usual practices and procedures of the particular segment of the United States commercial fishing industry to which the seized vessel belongs relative to the sale of fish caught and the distribution of the proceeds of such sale.

(c) ESTABLISHMENT OF FEES; AMOUNT OF FEES; CREDIT OF FEES TO SEPARATE TREASURY ACCOUNT; PAYMENT FROM COLLECTED FEES; AUTHORIZATION OF APPROPRIATIONS.—The Secretary shall from time to time establish by regulation fees which shall be paid by the owners of vessels entering into agreements under this section. Such fees shall be adequate (1) to recover the costs of administering this section, and (2) to cover a reasonable portion of any payments made by the Secretary under this section. All fees collected by the Secretary shall be credited to a separate account established in the Treasury of the United States which shall remain available without fiscal year limitation to carry out the provisions of this section. Those fees not currently needed for payments under this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States and all revenues accruing from such deposits or investments shall be credited to such separate account. If a transfer of funds is made to the separate account under section 5(b)(2) with respect to an unpaid claim and such claim is later paid, the amount so paid shall be covered into the Treasury as miscellaneous receipts. All payments under this section shall be made first out of such fees so long as they are available, and thereafter out of funds which are hereby authorized to be appropriated to such account to carry out the provisions of this section.

(d) FINALITY OF DETERMINATIONS; INSURED LOSSES.—All determinations made under this section shall be final. No payment under this section shall be made with respect to any losses covered by any policy of insurance or other provision of law.

(e) EFFECTIVE DATE.—The provisions of this section shall be effective until October 1, [2000;] *2003;* except that payments may be made under this section only to such extent and in such amounts as are provided in advance inappropriation Acts.

(f) DEFINITIONS.—For the purposes of this section—

(1) the term "Secretary" means the Secretary of State.

(2) the term "owner" includes any charterer of a commercial fishing vessel.

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