

103D CONGRESS
2D SESSION

S. 2455

To establish a system of licensing, reporting, and regulation for vessels of the United States fishing on the high seas.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 22 (legislative day, SEPTEMBER 12), 1994

Mr. KERRY (for himself and Mr. STEVENS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To establish a system of licensing, reporting, and regulation for vessels of the United States fishing on the high seas.

1 *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “High Seas Fisheries
5 Licensing Act of 1994”.

6 **SEC. 2. PURPOSE.**

7 It is the purpose of this Act—

8 (1) to implement the Agreement to Promote
9 Compliance with International Conservation and
10 Management Measures by Fishing Vessels on the

1 High Seas, adopted by the Conference of the Food
2 and Agriculture Organization of the United Nations
3 on November 24, 1993; and

4 (2) to establish a system of licensing, reporting,
5 and regulation for vessels of the United States fish-
6 ing on the high seas.

7 **SEC. 3. DEFINITIONS.**

8 As used in this Act:

9 (1) The term “Agreement” means the Agree-
10 ment to Promote Compliance with International
11 Conservation and Management Measures by Fishing
12 Vessels on the High Seas, adopted by the Con-
13 ference of the Food and Agriculture Organization of
14 the United Nations on November 24, 1993.

15 (2) The term “FAO” means the Food and Ag-
16 riculture Organization of the United Nations.

17 (3) The term “high seas” means the waters be-
18 yond the territorial sea or exclusive economic zone
19 (or the equivalent) of any nation, to the extent that
20 such territorial sea or exclusive economic zone (or
21 the equivalent) is recognized by the United States.

22 (4) The term “high seas fishing vessel” means
23 any vessel of the United States used or intended for
24 use—

25 (A) on the high seas;

(B) for the purpose of the commercial exploitation of living marine resources; and

(C) as a harvesting vessel, as a mother ship, or as any other support vessel directly engaged in a fishing operation.

(6) The term “length” means—

18 (A) for any high seas fishing vessel built
19 after July 18, 1982, 96 percent of the total
20 length on a waterline at 85 percent of the least
21 molded depth measured from the top of the
22 keel, or the length from the foreside of the stem
23 to the axis of the rudder stock on that water-
24 line, if that is greater. In ships designed with
25 a rake of keel the waterline on which this

1 length is measured shall be parallel to the de-
2 signed waterline; and

3 (B) for any high seas fishing vessel built
4 before July 18, 1982, registered length as en-
5 tered on the vessel's documentation.

6 (7) The term "person" means any individual
7 (whether or not a citizen of or national of the
8 United States), any corporation, partnership, asso-
9 ciation, or other entity (whether or not organized or
10 existing under the laws of any State), and any Fed-
11 eral, State, local, or foreign government or any en-
12 tity of any such government.

13 (8) The term "Secretary" means the Secretary
14 of Commerce or a designee.

15 (9) The term "vessel of the United States"
16 means—

17 (A) a vessel documented under chapter
18 121 of title 46 or numbered in accordance with
19 chapter 123 of title 46;

20 (B) a vessel owned in whole or part by—
21 (i) the United States or a territory,
22 commonwealth, or possession of the United
23 States;
24 (ii) a State or political subdivision
25 thereof;

3 (iv) a corporation created under the
4 laws of the United States or any State, the
5 District of Columbia, or any territory,
6 commonwealth, or possession of the United
7 States; unless the vessel has been granted
8 the nationality of a foreign nation in ac-
9 cordance with article 92 of the 1982 Unit-
10 ed Nations Convention on the Law of the
11 Sea and a claim of nationality or registry
12 for the vessel is made by the master or in-
13 dividual in charge at the time of the en-
14 forcement action by an officer or employee
15 of the United States authorized to enforce
16 applicable provisions of the United States
17 law; and

18 (C) a vessel that was once documented
19 under the laws of the United States and, in vio-
20 lation of the laws of the United States, was ei-
21 ther sold to a person not a citizen of the United
22 States or placed under foreign registry or a for-
23 eign flag, whether or not the vessel has been
24 granted the nationality of a foreign nation.

5 SEC. 4. LICENSING.

6 (a) IN GENERAL.—No high seas fishing vessel shall
7 engage in harvesting operations on the high seas unless
8 the vessel has on board a valid license issued under this
9 section.

10 (b) ELIGIBILITY.—

15 (A) the foreign nation suspended such au-
16 thorization because the vessel undermined the
17 effectiveness of international conservation and
18 management measures, and the suspension has
19 not expired; or

20 (B) the foreign nation, within the last
21 three years preceding application for a license
22 under this section, withdrew such authorization
23 because the vessel undermined the effectiveness
24 of international conservation and management
25 measures.

19 (c) APPLICATION.—

24 (2) The application form shall contain—

12 (d) CONDITIONS.—The Secretary shall establish such
13 conditions and restrictions on each license issued under
14 this section as are necessary and appropriate to carry out
15 the obligations of the United States under the Agreement,
16 including but not limited to the following:

1 tics. The Secretary shall promulgate regulations con-
2 cerning conditions under which information submit-
3 ted under this subsection may be released.

4 (e) FEES.—

5 (1) The Secretary may by regulation establish
6 the level of fees to be charged for licenses issued
7 under this section. The level of fees charged under
8 this paragraph shall not exceed the administrative
9 costs incurred in issuing such licenses. The licensing
10 fee shall be in addition to any fee required under
11 any regional licensing regime applicable to high seas
12 fishing vessels.

13 (2) The fees authorized by paragraph (1) shall
14 be collected and credited to the Operations, Re-
15 search and Facilities account of the National Oce-
16 anic and Atmospheric Administration. Any fees col-
17 lected shall be available until expended for the pur-
18 pose of implementing this Act, to the extent and in
19 the amounts provided in advance in appropriations
20 acts.

21 (f) DURATION.—A license issued under this section
22 is valid for the period specified in regulations issued under
23 section 5(d). A license issued under this section is void
24 in the event the vessel is no longer eligible for U.S. docu-

1 mentation, such documentation is revoked or denied, or
2 the vessel is deleted from such documentation.

3 **SEC. 5. RESPONSIBILITIES OF THE SECRETARY.**

4 (a) RECORD.—The Secretary shall maintain an auto-
5 mated file or record of high seas fishing vessels issued li-
6 censes under section 4, including all information submit-
7 ted under section 4(c)(2).

8 (b) INFORMATION TO FAO.—The Secretary, in co-
9 operation with the Secretaries of State and Transpor-
10 tation, shall—

11 (1) make available to FAO information con-
12 tained in the record maintained under subsection
13 (a);

14 (2) promptly notify FAO of changes in such in-
15 formation;

16 (3) promptly notify FAO of additions to or de-
17 letions from the record, and the reason for any dele-
18 tion;

19 (4) convey to FAO information relating to any
20 license granted under section 4(b)(3), including the
21 vessel's identity, owner or operator, and factors rel-
22 evant to the Secretary's determination to issue the
23 license;

24 (5) report promptly to FAO all relevant infor-
25 mation regarding any activities of high seas fishing

1 vessels that undermine the effectiveness of inter-
2 national conservation and management measures, in-
3 cluding the identity of the vessels and sanctions im-
4 posed; and

5 (6) provide the FAO a summary of evidence re-
6 garding any activities of foreign vessels that under-
7 mine the effectiveness of international conservation
8 and management measures.

9 (c) INFORMATION TO FLAG STATES.—The Secretary,
10 in cooperation with the Secretary of State and the Sec-
11 retary of Transportation, shall, where he or she has rea-
12 sonable grounds to believe that a foreign high seas fishing
13 vessel has engaged in activities undermining the effective-
14 ness of international conservation and management meas-
15 ures—

16 (1) provide to the flag State information, in-
17 cluding appropriate evidentiary material, relating to
18 those activities; and

19 (2) when such foreign high seas fishing vessel
20 is voluntarily in a United States port, the Secretary
21 shall promptly notify the flag State. If requested by
22 the flag State, the Secretary shall make arrange-
23 ments to undertake such lawful investigatory meas-
24 ures as may be considered necessary to establish

1 whether the high seas fishing vessel has been used
2 contrary to the provisions of the Agreement.

3 (d) REGULATIONS.—The Secretary, after consulta-
4 tion with the Secretary of State and the Secretary of
5 Transportation, may promulgate such regulations, in ac-
6 cordance with section 553 of title 5, United States Code,
7 as may be necessary to carry out the purposes of the
8 Agreement and this Act. The Secretary shall coordinate
9 such regulations with any other entities regulating high
10 seas fishing vessels, to minimize duplication of license ap-
11 plication and reporting requirements. To the extent prac-
12 ticable, such regulations shall also be consistent with regu-
13 lations implementing fishery management plans under the
14 Magnuson Fishery Conservation and Management Act (16
15 U.S.C. 1801 et seq.).

16 (e) NOTICE OF INTERNATIONAL CONSERVATION AND
17 MANAGEMENT MEASURES.—The Secretary, in consulta-
18 tion with the Secretary of State, shall publish in the Fed-
19 eral Register, from time to time, a notice listing inter-
20 national conservation and management measures recog-
21 nized by the United States.

22 **SEC. 6. UNLAWFUL ACTIVITIES.**

23 It is unlawful for any person subject to the jurisdic-
24 tion of the United States—

1 (1) to use a high seas fishing vessel on the high
2 seas in contravention of international conservation
3 and management measures described in section 5(e);

4 (2) to use a high seas fishing vessel on the high
5 seas, unless the vessel has on board a valid license
6 issued under section 4;

23 (6) to forcibly assault, resist, oppose, impede,
24 intimidate, or interfere with an authorized officer in

1 the conduct of any search or inspection described in
2 paragraph (5);
3 (7) to resist a lawful arrest or detention for any
4 act prohibited by this section;
5 (8) to interfere with, delay, or prevent, by any
6 means, the apprehension, arrest, or detection of an-
7 other person, knowing that such person has commit-
8 ted any act prohibited by this section;
9 (9) to ship, transport, offer for sale, sell, pur-
10 chase, import, export, or have custody, control, or
11 possession of, any living marine resource taken or
12 retained in violation of this Act or any regulation or
13 license issued under this Act; or
14 (10) to violate any provision of this Act or any
15 regulation or license issued under this Act.

16 **SEC. 7. ENFORCEMENT PROVISIONS**

17 (a) DUTIES OF SECRETARIES OF COMMERCE AND
18 TRANSPORTATION.—This Act shall be enforced by the
19 Secretary of Commerce and the Secretary of Transpor-
20 tation. Such Secretaries may by agreement utilize, on a
21 reimbursable basis or otherwise, the personnel, services,
22 equipment (including aircraft and vessels), and facilities
23 of any other Federal agency, or of any State agency, in
24 the performance of such duties. Such Secretaries shall,
25 and the head of any Federal or State agency that has en-

1 tered into an agreement with either such Secretary under
2 this section may (if the agreement so provides), authorize
3 officers to enforce the provisions of this Act or any regula-
4 tion or license issued under this Act.

5 (b) DISTRICT COURT JURISDICTION.—The district
6 courts of the United States shall have exclusive jurisdic-
7 tion over any case or controversy arising under the provi-
8 sions of this Act. In the case of Guam, and any Common-
9 wealth, territory, or possession of the United States in the
10 Pacific Ocean, the appropriate court is the United States
11 District Court for the District of Guam, except that in
12 the case of American Samoa, the appropriate court is the
13 United States District Court for the District of Hawaii.

14 (c) POWERS OF ENFORCEMENT OFFICERS.—

15 (1) Any officer who is authorized (by the Sec-
16 retary, the Secretary of Transportation, or the head
17 of any Federal or State agency that has entered into
18 an agreement with such Secretaries under subsection
19 (a)) to enforce the provisions of this Act may—

20 (A) with or without a warrant or other
21 process—

22 (i) arrest any person, if the officer has
23 reasonable cause to believe that such per-
24 son has committed an act prohibited by
25 section 9(a);

1 (ii) board, and search or inspect, any
2 high seas fishing vessel;

3 (iii) seize any high seas fishing vessel
4 (together with its fishing gear, furniture,
5 appurtenances, stores, and cargo) used or
6 employed in, or with respect to which it
7 reasonably appears that such vessel was
8 used or employed in, the violation of any
9 provision of this Act or any regulation or
10 license issued under this Act;

11 (iv) seize any living marine resource
12 (wherever found) taken or retained, in any
13 manner, in connection with or as a result
14 of the commission of any act prohibited by
15 section 6: or

16 (v) seize any other evidence related to
17 any violation of any provision of this Act
18 or any regulation or license issued under
19 this Act:

20 (B) execute any warrant or other process
21 issued by any court of competent jurisdiction;
22 and

23 (C) exercise any other lawful authority.

24 (2) Subject to the direction of the Secretary, a
25 person charged with law enforcement responsibilities

1 by the Secretary who is performing a duty related
2 to enforcement of a law regarding fisheries or other
3 marine resources may make an arrest without a war-
4 rant for an offense against the United States com-
5 mitted in his presence, or for a felony cognizable
6 under the laws of the United States, if he has rea-
7 sonable grounds to believe that the person to be ar-
8 rested has committed or is committing a felony.

9 (d) ISSUANCE OF CITATIONS.—If any authorized offi-
10 cer finds that a high seas fishing vessel is operating or
11 has been operated in violation of any provision of this Act,
12 such officer may issue a citation to the owner or operator
13 of such vessel in lieu of proceeding under subsection (c).
14 If a permit has been issued pursuant to this Act for such
15 vessel, such officer shall note the issuance of any citation
16 under this subsection, including the date thereof and the
17 reason therefor, on the permit. The Secretary shall main-
18 tain a record of all citations issued pursuant to this sub-
19 section.

20 **SEC. 8. CIVIL PENALTIES AND LICENSE SANCTIONS.**

21 (a) CIVIL PENALTIES.—

22 (1) Any person who is found by the Secretary,
23 after notice and opportunity for a hearing in accord-
24 ance with section 554 of title 5, United States Code,
25 to have committed an act prohibited by section 6

1 shall be liable to the United States for a civil pen-
2 alty. The amount of the civil penalty shall not exceed
3 \$100,000 for each violation. Each day of a continu-
4 ing violation shall constitute a separate offense. The
5 amount of such civil penalty shall be assessed by the
6 Secretary by written notice. In determining the
7 amount of such penalty, the Secretary shall take
8 into account the nature, circumstances, extent, and
9 gravity of the prohibited acts committed and, with
10 respect to the violation, the degree of culpability,
11 any history of prior offenses, and such other matters
12 as justice may require.

13 (2) The Secretary may compromise, modify, or
14 remit, with or without conditions, any civil penalty
15 that is subject to imposition or that has been im-
16 posed under this section.

17 (b) LICENSE SANCTIONS.—

18 (1) In any case in which—

19 (A) a vessel of the United States has been
20 used in the commission of an act prohibited
21 under section 6;

22 (B) the owner or operator of a vessel or
23 any other person who has been issued or has
24 applied for a license under section 4 has acted
25 in violation of section 6; or

1 (C) any amount in settlement of a civil for-
2 feiture imposed on a vessel or other property, or
3 any civil penalty or criminal fine imposed on a
4 vessel or owner or operator of a vessel of the
5 United States or any other person who has been
6 issued or has applied for a license under any
7 fishery resource statute enforced by the Sec-
8 retary, has not been paid and is overdue, the
9 Secretary may—

10 (i) revoke any license issued with re-
11 spect to such vessel or person, with or
12 without prejudice to the issuance of subse-
13 quent licenses;

14 (ii) suspend such license for a period
15 of time considered by the Secretary to be
16 appropriate;

17 (iii) deny such license; or

18 (iv) impose additional conditions and
19 restrictions on any license issued to or ap-
20 plied for by such vessel or person under
21 this Act.

22 (2) In imposing a sanction under this sub-
23 section, the Secretary shall take into account—

23 (5) No sanctions shall be imposed under this
24 subsection unless there has been prior opportunity
25 for a hearing on the facts underlying the violation

1 for which the sanction is imposed, either in conjunc-
2 tion with a civil penalty proceeding under this sec-
3 tion or otherwise.

4 (c) HEARING.—For the purposes of conducting any
5 hearing under this section, the Secretary may issue sub-
6 poenas for the attendance and testimony of witnesses and
7 the production of relevant papers, books, and documents,
8 and may administer oaths. Witnesses summoned shall be
9 paid the same fees and mileage that are paid to witnesses
10 in the courts of the United States. In case of contempt
11 or refusal to obey a subpoena served upon any person pur-
12 suant to this subsection, the district court of the United
13 States for any district in which such person is found, re-
14 sides, or transacts business, upon application by the Unit-
15 ed States and after notice to such person, shall have juris-
16 diction to issue an order requiring such person to appear
17 and give testimony before the Secretary or to appear and
18 produce documents before the Secretary, or both, and any
19 failure to obey such order of the court may be punished
20 by such court as a contempt thereof.

21 (d) JUDICIAL REVIEW.—Any person against whom a
22 civil penalty is assessed under subsection (a) or against
23 whose vessel a license sanction is imposed under sub-
24 section (b) (other than a license suspension for
25 nonpayment of penalty or fine) may obtain review thereof

1 in the United States district court for the appropriate dis-
2 trict by filing a complaint against the Secretary in such
3 court within 30 days from the date of such penalty or
4 sanction. The Secretary shall promptly file in such court
5 a certified copy of the record upon which such penalty or
6 sanction was imposed, as provided in section 2112 of title
7 28, United States Code. The findings and order of the
8 Secretary shall be set aside by such court if they are not
9 found to be supported by substantial evidence, as provided
10 in section 706(2) of title 5, United States Code.

11 (e) COLLECTION.—

12 (1) If any person fails to pay an assessment of
13 a civil penalty after it has become a final and
14 unappealable order, or after the appropriate court
15 has entered final judgment in favor of the Secretary,
16 the matter shall be referred to the Attorney General,
17 who shall recover the amount assessed in any appro-
18 priate district court of the United States. In such
19 action, the validity and appropriateness of the final
20 order imposing the civil penalty shall not be subject
21 to review.

22 (2) A high seas fishing vessel (including its
23 fishing gear, furniture, appurtenances, stores, and
24 cargo) used in the commission of an act prohibited
25 by section 6 shall be liable in rem for any civil pen-

1 alty assessed for such violation under subsection (a)
2 and may be proceeded against in any district court
3 of the United States having jurisdiction thereof.
4 Such penalty shall constitute a maritime lien on
5 such vessel that may be recovered in an action in
6 rem in the district court of the United States having
7 jurisdiction over the vessel.

8 **SEC. 9. CRIMINAL OFFENSES.**

9 (a) OFFENSES.—A person is guilty of an offense if
10 the person commits any act prohibited by section 6(6), (7),
11 (8), or (9).

12 (b) PUNISHMENT.—Any offense described in sub-
13 section (a) is a class A misdemeanor punishable by a fine
14 under title 18, United States Code, or imprisonment for
15 not more than one year, or both; except that if in the com-
16 mission of any offense the person uses a dangerous weap-
17 on, engages in conduct that causes bodily injury to any
18 authorized officer, or places any such officer in fear of
19 imminent bodily injury, the offense is a felony punishable
20 by a fine under title 18, United States Code, or imprison-
21 ment for not more than 10 years, or both.

22 **SEC. 10. FORFEITURES.**

23 (a) IN GENERAL.—Any high seas fishing vessel (in-
24 cluding its fishing gear, furniture, appurtenances, stores,
25 and cargo) used, and any living marine resources (or a

1 fair market value thereof) taken or retained, in any man-
2 ner, in connection with or as a result of the commission
3 of any act prohibited by section 6 shall be subject to for-
4 feiture to the United States. All or part of such vessel
5 may, and all such living marine resources shall, be for-
6 feited to the United States pursuant to a civil proceeding
7 under this section.

8 (b) JURISDICTION OF DISTRICT COURTS.—Any dis-
9 trict court of the United States shall have jurisdiction,
10 upon application of the Attorney General on behalf of the
11 United States, to order any forfeiture authorized under
12 subsection (a) and any action provided for under sub-
13 section (d).

14 (c) JUDGMENT.—If a judgment is entered for the
15 United States in a civil forfeiture proceeding under this
16 section, the Attorney General may seize any property or
17 other interest declared forfeited to the United States,
18 which has not previously been seized pursuant to this Act
19 or for which security has not previously been obtained.
20 The provisions of the customs laws relating to—

21 (1) the seizure, forfeiture, and condemnation of
22 property for violation of the customs law;
23 (2) the disposition of such property or the pro-
24 ceeds from the sale thereof; and

7 (d) PROCEDURE.—

11 (A) stay the execution of such process; or
12 (B) discharge any living marine resources
13 seized pursuant to such process;
14 upon receipt of a satisfactory bond or other security
15 from any person claiming such property. Such bond
16 or other security shall be conditioned upon such per-
17 son delivering such property to the appropriate court
18 upon order thereof, without any impairment of its
19 value, or paying the monetary value of such property
20 pursuant to an order of such court. Judgment shall
21 be recoverable on such bond or other security
22 against both the principal and any sureties in the
23 event that any condition thereof is breached, as de-
24 termined by such court.

7 (e) REBUTTABLE PRESUMPTION.—For purposes of
8 this section, all living marine resources found on board
9 a high seas fishing vessel and which are seized in connec-
10 tion with an act prohibited by section 6 are presumed to
11 have been taken or retained in violation of this Act, but
12 the presumption can be rebutted by an appropriate show-
13 ing of evidence to the contrary.

14 SEC. 11. EFFECTIVE DATE.

15 This Act shall take effect 6 months after the entry
16 into force of the Agreement, or 6 months after the date
17 of enactment of this Act, whichever is later.

○

S 2455 IS—2