

Union Calendar No. 169

103D CONGRESS
1ST SESSION

H. R. 3188

[Report No. 103-316]

A BILL

To amend the Central Bering Sea Fisheries
Enforcement Act of 1992.

NOVEMBER 2, 1993

Reported with amendments, committed to the Committee
of the Whole House on the State of the Union, and or-
dered to be printed

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To amend the Central Bering Sea Fisheries Enforcement Act of 1992.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 1993

Mr. YOUNG of Alaska (for himself, Mr. STUDDS, Mr. MANTON, and Mr. FIELDS of Texas) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

NOVEMBER 2, 1993

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on September 29, 1993]

A BILL

To amend the Central Bering Sea Fisheries Enforcement Act of 1992.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **TITLE I—FISHERIES ENFORCE-**
2 **MENT IN CENTRAL SEA OF**
3 **OKHOTSK**

4 **SEC. 101. SHORT TITLE.**

5 *This title may be cited as the “Sea of Okhotsk Fisheries*
6 *Enforcement Act of 1993”.*

7 **SEC. 102. FISHING PROHIBITION.**

8 *The Central Bering Sea Fisheries Enforcement Act of*
9 *1992 (16 U.S.C. 1823 note) is amended—*

10 *(1) in section 302, by inserting “and the Central*
11 *Sea of Okhotsk” after “Central Bering Sea”; and*

12 *(2) in section 306—*

13 *(A) by redesignating paragraphs (2), (3),*
14 *(4), (5), and (6) in order as paragraphs (3), (4),*
15 *(5), (6), and (7); and*

16 *(B) by inserting after paragraph (1) the fol-*
17 *lowing:*

18 *“(2) CENTRAL SEA OF OKHOTSK.—The term*
19 *‘Central Sea of Okhotsk’ means the central Sea of*
20 *Okhotsk area which is more than two hundred nau-*
21 *tical miles seaward of the baseline from which the*
22 *breadth of the territorial sea of the Russian Federa-*
23 *tion is measured.”.*

1 **TITLE II—IMPLEMENTATION OF**
2 **CONVENTION ON FUTURE**
3 **MULTILATERAL COOPERA-**
4 **TION IN THE NORTHWEST AT-**
5 **LANTIC FISHERIES**

6 **SEC. 201. SHORT TITLE.**

7 *This title may be cited as the “Northwest Atlantic*
8 *Fisheries Convention Act of 1993”.*

9 **SEC. 202. REPRESENTATION OF UNITED STATES UNDER**
10 **CONVENTION.**

11 *(a) COMMISSIONERS.—*

12 *(1) APPOINTMENTS, GENERALLY.—The Secretary*
13 *shall appoint not more than three individuals to serve*
14 *as the representatives of the United States on the Gen-*
15 *eral Council and the Fisheries Commission, who shall*
16 *each—*

17 *(A) be known as a “United States Commis-*
18 *sioner to the Northwest Atlantic Fisheries Orga-*
19 *nization”; and*

20 *(B) serve at the pleasure of the Secretary.*

21 *(2) REQUIREMENTS FOR APPOINTMENTS.—*

22 *(A) The Secretary shall ensure that of the*
23 *individuals serving as Commissioners.—*

1 (i) at least one is appointed from
2 among representatives of the commercial
3 fishing industry; and

4 (ii) one (but no more than one) is an
5 official of the Government.

6 (B) The Secretary may not appoint as a
7 Commissioner an individual unless the individ-
8 ual is knowledgeable and experienced concerning
9 the fishery resources to which the Convention ap-
10 plies.

11 (3) TERMS.—

12 (A) The term of an individual appointed as
13 a Commissioner—

14 (i) shall be specified by the Secretary
15 at the time of appointment; and

16 (ii) may not exceed four years.

17 (B) An individual who is not a Government
18 official may not serve more than two consecutive
19 terms as a Commissioner.

20 (b) ALTERNATE COMMISSIONERS.—

21 (1) APPOINTMENT.—The Secretary may, for any
22 anticipated absence of a duly appointed Commis-
23 sioner at a meeting of the General Council or the
24 Fisheries Commission, designate an individual to
25 serve as an Alternate Commissioner.

1 (2) *FUNCTIONS.*—An Alternate Commissioner
2 may exercise all powers and perform all duties of the
3 Commissioner for whom the Alternate Commissioner
4 is designated, at any meeting of the General Council
5 or the Fisheries Commission for which the Alternate
6 Commissioner is designated.

7 (c) *REPRESENTATIVES.*—

8 (1) *APPOINTMENT.*—The Secretary shall appoint
9 not more than three individuals to serve as the rep-
10 resentatives of the United States on the Scientific
11 Council, who shall each be known as a “United States
12 Representative to the Northwest Atlantic Fisheries Or-
13 ganization Scientific Council”.

14 (2) *ELIGIBILITY FOR APPOINTMENT.*—

15 (A) The Secretary may not appoint an in-
16 dividual as a Representative unless the individ-
17 ual is knowledgeable and experienced concerning
18 the scientific issues dealt with by the Scientific
19 Council.

20 (B) The Secretary shall appoint as a Rep-
21 resentative at least one individual who is an offi-
22 cial of the Government.

23 (3) *TERM.*—An individual appointed as a Rep-
24 resentative—

1 (A) shall serve for a term of not to exceed
2 four years, as specified by the Secretary at the
3 time of appointment;

4 (B) may be reappointed; and

5 (C) shall serve at the pleasure of the Sec-
6 retary.

7 (d) ALTERNATE REPRESENTATIVES.—

8 (1) APPOINTMENT.—The Secretary may, for any
9 anticipated absence of a duly appointed Representa-
10 tive at a meeting of the Scientific Council, designate
11 an individual to serve as an Alternate Representative.

12 (2) FUNCTIONS.—An Alternate Representative
13 may exercise all powers and perform all duties of the
14 Representative for whom the Alternate Representative
15 is designated, at any meeting of the Scientific Council
16 for which the Alternate Representative is designated.

17 (e) EXPERTS AND ADVISERS.—The Commissioners, Al-
18 ternate Commissioners, Representatives, and Alternate Rep-
19 resentatives may be accompanied at meetings of the Organi-
20 zation by experts and advisers.

21 (f) COORDINATION AND CONSULTATION.—

22 (1) IN GENERAL.—In carrying out their func-
23 tions under the Convention, Commissioners, Alternate
24 Commissioners, Representatives, and Alternate Rep-
25 resentatives shall—

1 (A) coordinate with the appropriate Re-
2 gional Fishery Management Councils established
3 by section 302 of the Magnuson Act (16 U.S.C.
4 1852); and

5 (B) consult with the committee established
6 under section 209.

7 (2) *RELATIONSHIP TO OTHER LAW.*—The Fed-
8 eral Advisory Committee Act (5 U.S.C. App.) shall
9 not apply to coordination and consultations under
10 this subsection.

11 **SEC. 203. REQUESTS FOR SCIENTIFIC ADVICE.**

12 (a) *RESTRICTION.*—The Representatives may not
13 make a request or specification described in subsection
14 (b)(1) or (2), respectively, unless the Representatives have
15 first—

16 (1) consulted with the appropriate Regional
17 Fishery Management Councils; and

18 (2) received the consent of the Commissioners for
19 that action.

20 (b) *REQUESTS AND TERMS OF REFERENCE DE-*
21 *SCRIBED.*—The requests and specifications referred to in
22 subsection (a) are, respectively—

23 (1) any request, under Article VII(1) of the Con-
24 vention, that the Scientific Council consider and re-
25 port on a question pertaining to the scientific basis

1 *for the management and conservation of fishery re-*
2 *sources in waters under the jurisdiction of the United*
3 *States within the Convention Area; and*

4 *(2) any specification, under Article VIII(2) of*
5 *the Convention, of the terms of reference for the con-*
6 *sideration of a question referred to the Scientific*
7 *Council pursuant to Article VII(1) of the Convention.*

8 **SEC. 204. AUTHORITIES OF SECRETARY OF STATE WITH RE-**
9 **SPECT TO CONVENTION.**

10 *The Secretary of State may, on behalf of the Govern-*
11 *ment of the United States—*

12 *(1) receive and transmit reports, requests, rec-*
13 *ommendations, proposals, and other communications*
14 *of and to the Organization and its subsidiary organs;*

15 *(2) object, or withdraw an objection, to the pro-*
16 *posal of the Fisheries Commission;*

17 *(3) give or withdraw notice of intent not to be*
18 *bound by a measure of the Fisheries Commission;*

19 *(4) object or withdraw an objection, to an*
20 *amendment to the Convention; and*

21 *(5) act upon, or refer to any other appropriate*
22 *authority, any other communication referred to in*
23 *paragraph (1).*

1 **SEC. 205. INTERAGENCY COOPERATION.**

2 (a) *AUTHORITIES OF SECRETARY.*—In carrying out
3 the provisions of the Convention and this title, the Secretary
4 may arrange for cooperation with other agencies of the
5 United States, the States, the New England Fishery Man-
6 agement Council, and private institutions and organiza-
7 tions.

8 (b) *OTHER AGENCIES.*—The head of any Federal agen-
9 cy may—

10 (1) *cooperate in the conduct of scientific and*
11 *other programs, and furnish facilities and personnel,*
12 *for the purposes of assisting the Organization in car-*
13 *rying out its duties under the Convention; and*

14 (2) *accept reimbursement from the Organization*
15 *for providing such services, facilities, and personnel.*

16 **SEC. 206. RULEMAKING.**

17 *The Secretary shall promulgate regulations as may be*
18 *necessary to carry out the purposes and objectives of the*
19 *Convention and this title. Any such regulation may be*
20 *made applicable, as necessary, to all persons and all vessels*
21 *subject to the jurisdiction of the United States, wherever*
22 *located.*

23 **SEC. 207. PROHIBITED ACTS AND PENALTIES.**

24 (a) *PROHIBITION.*—It is unlawful for any person or
25 vessel that is subject to the jurisdiction of the United
26 States—

1 (1) to violate any regulation issued under this
2 title or any measure that is legally binding on the
3 United States under the Convention;

4 (2) to refuse to permit any authorized enforce-
5 ment officer to board a fishing vessel that is subject
6 to the person's control for purposes of conducting any
7 search or inspection in connection with the enforce-
8 ment of this title, any regulation issued under this
9 title, or any measure that is legally binding on the
10 United States under the Convention;

11 (3) forcibly to assault, resist, oppose, impede, in-
12 timidate, or interfere with any authorized enforce-
13 ment officer in the conduct of any search or inspec-
14 tion described in paragraph (2);

15 (4) to resist a lawful arrest for any act prohib-
16 ited by this section;

17 (5) to ship, transport, offer for sale, sell, pur-
18 chase, import, export, or have custody, control, or pos-
19 session of, any fish taken or retained in violation of
20 this section; or

21 (6) to interfere with, delay, or prevent, by any
22 means, the apprehension or arrest of another person,
23 knowing that the other person has committed an act
24 prohibited by this section.

1 (b) *CIVIL PENALTY.*—Any person who commits any
2 act that is unlawful under subsection (a) shall be liable to
3 the United States for a civil penalty, or may be subject to
4 a permit sanction, under section 308 of the Magnuson Act
5 (16 U.S.C. 1858).

6 (c) *CRIMINAL PENALTY.*—Any person who commits an
7 act that is unlawful under paragraph (2), (3), (4), or (6)
8 of subsection (a) shall be guilty of an offense punishable
9 under section 309(b) of the Magnuson Act (16 U.S.C.
10 1859(b)).

11 (d) *CIVIL FORFEITURE.*—

12 (1) *IN GENERAL.*—Any vessel (including its gear,
13 furniture, appurtenances, stores, and cargo) used in
14 the commission of an act that is unlawful under sub-
15 section (a), and any fish (or the fair market value
16 thereof) taken or retained, in any manner, in connec-
17 tion with or as a result of the commission of any act
18 that is unlawful under subsection (a), shall be subject
19 to seizure and forfeiture as provided in section 310 of
20 the Magnuson Act (16 U.S.C. 1860).

21 (2) *DISPOSAL OF FISH.*—Any fish seized pursu-
22 ant to this title may be disposed of pursuant to the
23 order of a court of competent jurisdiction or, if per-
24 ishable, in a manner prescribed by regulations issued
25 by the Secretary.

1 (e) *ENFORCEMENT.*—*The Secretary and the Secretary*
2 *of the Department in which the Coast Guard is operating*
3 *shall enforce the provisions of this title and shall have the*
4 *authority specified in sections 311(a), (b)(1), and (c) of the*
5 *Magnuson Act (16 U.S.C. 1861(a), (b)(1), and (c)) for that*
6 *purpose.*

7 (f) *JURISDICTION OF COURTS.*—*The district courts of*
8 *the United States shall have exclusive jurisdiction over any*
9 *case or controversy arising under this section and may, at*
10 *any time—*

11 (1) *enter restraining orders or prohibitions;*

12 (2) *issue warrants, process in rem, or other*
13 *process;*

14 (3) *prescribe and accept satisfactory bonds or*
15 *other security; and*

16 (4) *take such other actions as are in the interests*
17 *of justice.*

18 **SEC. 208. UNITED STATES-CANADA FISHERY MANAGEMENT**

19 **AGREEMENT.**

20 (a) *NEGOTIATIONS.*—*Not later than 180 days after the*
21 *date of enactment of this Act, the Secretary of State, in*
22 *consultation with the Secretary of Commerce and the Com-*
23 *mittee established under section 209, is authorized and en-*
24 *couraged to initiate negotiations with the Government of*
25 *Canada for the purpose of entering into an international*

1 *fishery agreement with Canada for the conservation and*
2 *management of fisheries of mutual concern in the northwest*
3 *Atlantic Ocean, with particular emphasis on*
4 *transboundary stocks of groundfish and ensuring the success*
5 *of New England groundfish restoration efforts pursuant to*
6 *the Magnuson Act.*

7 (b) *CONTENTS OF AGREEMENT.*—An agreement en-
8 *tered into pursuant to this section shall—*

9 (1) *provide for timely and periodic exchanges of*
10 *scientific information relating to the conservation and*
11 *management of fisheries stocks of mutual concern;*

12 (2) *provide for routine meetings between the offi-*
13 *cials of the United States and Canada responsible for*
14 *the conservation and management of fisheries;*

15 (3) *establish procedures for the identification of*
16 *conservation and management measures that would*
17 *be mutually beneficial; and*

18 (4) *identify procedures for the implementation*
19 *within each country of conservation and management*
20 *measures identified as mutually beneficial.*

21 (c) *APPLICATION OF EXISTING LAW.*—An agreement
22 *entered into pursuant to this section shall be subject to sec-*
23 *tion 203 of the Magnuson Act (16 U.S.C. 1823).*

24 (d) *LETTER.*—Not later than one year after the date
25 *of enactment of this Act, and annually thereafter until the*

1 *effective date of an agreement entered into pursuant to this*
2 *section, the Secretary of State shall transmit to the Congress*
3 *a letter describing activities of the Secretary under this*
4 *section.*

5 **SEC. 209. CONSULTATIVE COMMITTEE.**

6 (a) *ESTABLISHMENT.*—*The Secretary of State and the*
7 *Secretary of Commerce, shall jointly establish a consultative*
8 *committee to advise the Secretaries on issues related to the*
9 *Convention and in the development and implementation of*
10 *a fishery agreement pursuant to section 208.*

11 (b) *MEMBERSHIP.*—(1) *The membership of the Com-*
12 *mittee shall include representatives from the New England*
13 *Fishery Management Council, the States represented on*
14 *that Council, the Atlantic States Marine Fisheries Commis-*
15 *sion, the fishing industry, the seafood processing industry,*
16 *and others knowledgeable and experienced in the conserva-*
17 *tion and management of fisheries in the Northwest Atlantic*
18 *Ocean.*

19 (2) *TERMS AND REAPPOINTMENT.*—*Each member of*
20 *the consultative committee shall serve for a term of two*
21 *years and shall be eligible for reappointment.*

22 (c) *DUTIES OF THE COMMITTEE.*—

23 (1) *NORTHWEST ATLANTIC FISHERIES ORGANI-*
24 *ZATION.*—*Members of the consultative committee may*
25 *attend—*

1 (A) *all public meetings of the General Coun-*
2 *cil or the Fisheries Commission;*

3 (B) *any other meetings to which they are*
4 *invited by the General Council or the Fisheries*
5 *Commission; and*

6 (C) *all nonexecutive meetings of the United*
7 *States Commissioners.*

8 (2) *UNITED STATES-CANADA FISHERIES MANAGE-*
9 *MENT AGREEMENT.—Members of the consultative com-*
10 *mittee shall advise the the Secretaries on any agree-*
11 *ments established under section 208.*

12 (d) *RELATIONSHIP TO OTHER LAW.—The Federal Ad-*
13 *visory Committee Act (5 U.S.C. App.) shall not apply to*
14 *the consultative committee established under this section.*

15 **SEC. 210. ADMINISTRATIVE MATTERS.**

16 (a) *PROHIBITION ON COMPENSATION.—A person shall*
17 *not receive any compensation from the Government by rea-*
18 *son of any service of the person as—*

19 (1) *a Commissioner, Alternate Commissioner,*
20 *Representative, or Alternative Representative;*

21 (2) *an expert or adviser authorized under section*
22 *202(e); or*

23 (3) *a member of the consultative committee es-*
24 *tablished by section 209.*

1 (b) *TRAVEL AND EXPENSES.*—*The Secretary of State*
2 *shall, subject to the availability of appropriations, pay all*
3 *necessary travel and other expenses of persons described in*
4 *subsection (a)(1) and of not more than six experts and ad-*
5 *visers authorized under section 202(e) with respect to their*
6 *actual performance of their official duties pursuant to this*
7 *title, in accordance with the Federal Travel Regulations*
8 *and sections 5701, 5702, 5704 through 5708, and 5731 of*
9 *title 5, United States Code.*

10 (c) *STATUS AS FEDERAL EMPLOYEES.*—*A person shall*
11 *not be considered to be a Federal employee by reason of*
12 *any service of the person in a capacity described in sub-*
13 *section (a), except for purposes of injury compensation and*
14 *tort claims liability under chapter 81 of title 5, United*
15 *States Code, and chapter 17 of title 28, United States Code,*
16 *respectively.*

17 **SEC. 211. DEFINITIONS.**

18 *In this title the following definitions apply:*

19 (1) *AUTHORIZED ENFORCEMENT OFFICER.*—*The*
20 *term “authorized enforcement officer” means a person*
21 *authorized to enforce this title, any regulation issued*
22 *under this title, or any measure that is legally bind-*
23 *ing on the United States under the Convention.*

24 (2) *COMMISSIONER.*—*The term “Commissioner”*
25 *means a United States Commissioner to the North-*

1 *west Atlantic Fisheries Organization appointed under*
2 *section 202(a).*

3 (3) *CONVENTION.*—*The term “Convention”*
4 *means the Convention on Future Multilateral Co-*
5 *operation in the Northwest Atlantic Fisheries, done at*
6 *Ottawa on October 24, 1978.*

7 (4) *FISHERIES COMMISSION.*—*The term “Fish-*
8 *eries Commission” means the Fisheries Commission*
9 *provided for by Articles II, XI, XII, XIII, and XIV*
10 *of the Convention.*

11 (5) *GENERAL COUNCIL.*—*The term “General*
12 *Council” means the General Council provided for by*
13 *Article II, III, IV, and V of the Convention.*

14 (6) *MAGNUSON ACT.*—*The term “Magnuson Act”*
15 *means the Magnuson Fishery Conservation and Man-*
16 *agement Act (16 U.S.C. 1801 et seq.).*

17 (7) *ORGANIZATION.*—*The term “Organization”*
18 *means the Northwest Atlantic Fisheries Organization*
19 *provided for by Article II of the Convention.*

20 (8) *PERSON.*—*The term “person” means any in-*
21 *dividual (whether or not a citizen or national of the*
22 *United States), and any corporation, partnership, as-*
23 *sociation, or other entity (whether or not organized or*
24 *existing under the laws of any State).*

1 (9) *REPRESENTATIVE*.—The term “Representa-
2 tive” means a United States Representative to the
3 Northwest Atlantic Fisheries Scientific Council ap-
4 pointed under section 202(c).

5 (10) *SCIENTIFIC COUNCIL*.—The term “Scientific
6 Council” means the Scientific Council provided for by
7 Articles II, VI, VII, VIII, IX, and X of the Conven-
8 tion.

9 (11) *SECRETARY*.—The term “Secretary” means
10 the Secretary of Commerce.

11 **SEC. 212. AUTHORIZATION OF APPROPRIATIONS.**

12 There are authorized to be appropriated to carry out
13 this title, including use for payment as the United States
14 contribution to the Organization as provided in Article XVI
15 of the Convention, \$500,000 for each of the fiscal years
16 1994, 1995, and 1996.

 Amend the title so as to read: “A bill to prohibit
 fishing in the Central Sea of Okhotsk, and for other pur-
 poses.”.

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