

Union Calendar No. 21

104TH CONGRESS
1ST SESSION

H. R. 622

[Report No. 104-41]

A BILL

To implement the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries.

FEBRUARY 21, 1995

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

JANUARY 20, 1995

Mr. STUDDS (for himself and Mr. YOUNG of Alaska) introduced the following bill; which was referred to the Committee on Resources

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A BILL

To implement the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Northwest Atlantic
5 Fisheries Convention Act of 1995”.

1 **SEC. 2. REPRESENTATION OF UNITED STATES UNDER**
2 **CONVENTION.**

3 (a) COMMISSIONERS.—

4 (1) APPOINTMENTS, GENERALLY.—The Sec-
5 retary shall appoint not more than 3 individuals to
6 serve as the representatives of the United States on
7 the General Council and the Fisheries Commission,
8 who shall each—

9 (A) be known as a “United States Com-
10 missioner to the Northwest Atlantic Fisheries
11 Organization”; and

12 (B) serve at the pleasure of the Secretary.

13 (2) REQUIREMENTS FOR APPOINTMENTS.—

14 (A) The Secretary shall ensure that of the
15 individuals serving as Commissioners—

16 (i) at least 1 is appointed from among
17 representatives of the commercial fishing
18 industry;

19 (ii) 1 (but no more than 1) is an offi-
20 cial of the Government; and

21 (iii) 1, other than the individual ap-
22 pointed under clause (ii), is a voting mem-
23 ber of the New England Fishery Manage-
24 ment Council.

25 (B) The Secretary may not appoint as a
26 Commissioner an individual unless the individ-

1 ual is knowledgeable and experienced concern-
2 ing the fishery resources to which the Conven-
3 tion applies.

4 (3) TERMS.—

5 (A) The term of an individual appointed as
6 a Commissioner—

7 (i) shall be specified by the Secretary
8 at the time of appointment; and

9 (ii) may not exceed 4 years.

10 (B) An individual who is not a Government
11 official may not serve more than 2 consecutive
12 terms as a Commissioner.

13 (b) ALTERNATE COMMISSIONERS.—

14 (1) APPOINTMENT.—The Secretary may, for
15 any anticipated absence of a duly appointed Com-
16 missioner at a meeting of the General Council or the
17 Fisheries Commission, designate an individual to
18 serve as an Alternate Commissioner.

19 (2) FUNCTIONS.—An Alternate Commissioner
20 may exercise all powers and perform all duties of the
21 Commissioner for whom the Alternate Commissioner
22 is designated, at any meeting of the General Council
23 or the Fisheries Commission for which the Alternate
24 Commissioner is designated.

25 (c) REPRESENTATIVES.—

1 (1) APPOINTMENT.—The Secretary shall ap-
2 point not more than 3 individuals to serve as the
3 representatives of the United States on the Scientific
4 Council, who shall each be known as a “United
5 States Representative to the Northwest Atlantic
6 Fisheries Organization Scientific Council”.

7 (2) ELIGIBILITY FOR APPOINTMENT.—

8 (A) The Secretary may not appoint an in-
9 dividual as a Representative unless the individ-
10 ual is knowledgeable and experienced concern-
11 ing the scientific issues dealt with by the Sci-
12 entific Council.

13 (B) The Secretary shall appoint as a Rep-
14 resentative at least 1 individual who is an offi-
15 cial of the Government.

16 (3) TERM.—An individual appointed as a Rep-
17 resentative—

18 (A) shall serve for a term of not to exceed
19 4 years, as specified by the Secretary at the
20 time of appointment;

21 (B) may be reappointed; and

22 (C) shall serve at the pleasure of the Sec-
23 retary.

24 (d) ALTERNATE REPRESENTATIVES.—

1 (1) APPOINTMENT.—The Secretary may, for
2 any anticipated absence of a duly appointed Rep-
3 resentative at a meeting of the Scientific Council,
4 designate an individual to serve as an Alternate Rep-
5 resentative.

6 (2) FUNCTIONS.—An Alternate Representative
7 may exercise all powers and perform all duties of the
8 Representative for whom the Alternate Representa-
9 tive is designated, at any meeting of the Scientific
10 Council for which the Alternate Representative is
11 designated.

12 (e) EXPERTS AND ADVISERS.—The Commissioners,
13 Alternate Commissioners, Representatives, and Alternate
14 Representatives may be accompanied at meetings of the
15 Organization by experts and advisers.

16 (f) COORDINATION AND CONSULTATION.—

17 (1) IN GENERAL.—In carrying out their func-
18 tions under the Convention, Commissioners, Alter-
19 nate Commissioners, Representatives, and Alternate
20 Representatives shall—

21 (A) coordinate with the appropriate Re-
22 gional Fishery Management Councils estab-
23 lished by section 302 of the Magnuson Act (16
24 U.S.C. 1852); and

1 (B) consult with the committee established
2 under section 8 of this Act.

3 (2) RELATIONSHIP TO OTHER LAW.—The Fed-
4 eral Advisory Committee Act (5 U.S.C. App.) shall
5 not apply to coordination and consultations under
6 this subsection.

7 **SEC. 3. REQUESTS FOR SCIENTIFIC ADVICE.**

8 (a) RESTRICTION.—The Representatives may not
9 make a request or specification described in subsection (b)
10 (1) or (2), respectively, unless the Representatives have
11 first—

12 (1) consulted with the appropriate Regional
13 Fishery Management Councils; and

14 (2) received the consent of the Commissioners
15 for that action.

16 (b) REQUESTS AND TERMS OF REFERENCE DE-
17 SCRIBED.—The requests and specifications referred to in
18 subsection (a) are, respectively—

19 (1) any request, under Article VII(1) of the
20 Convention, that the Scientific Council consider and
21 report on a question pertaining to the scientific basis
22 for the management and conservation of fishery re-
23 sources in waters under the jurisdiction of the
24 United States within the Convention Area; and

1 (2) any specification, under Article VIII(2) of
2 the Convention, of the terms of reference for the
3 consideration of a question referred to the Scientific
4 Council pursuant to Article VII(1) of the Conven-
5 tion.

6 **SEC. 4. AUTHORITIES OF SECRETARY OF STATE WITH RE-**
7 **SPECT TO CONVENTION.**

8 The Secretary of State may, on behalf of the Govern-
9 ment of the United States—

10 (1) receive and transmit reports, requests, rec-
11 ommendations, proposals, and other communications
12 of and to the Organization and its subsidiary or-
13 gans;

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

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

18 (4) object or withdraw an objection to an
19 amendment to the Convention; and

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

23 **SEC. 5. INTERAGENCY COOPERATION.**

24 (a) **AUTHORITIES OF SECRETARY.**—In carrying out
25 the provisions of the Convention and this title, the Sec-

1 retary may arrange for cooperation with other agencies of
2 the United States, the States, the New England and the
3 Mid-Atlantic Fishery Management Councils, and private
4 institutions and organizations.

5 (b) OTHER AGENCIES.—The head of any Federal
6 agency may—

7 (1) cooperate in the conduct of scientific and
8 other programs, and furnish facilities and personnel,
9 for the purposes of assisting the Organization in
10 carrying out its duties under the Convention; and

11 (2) accept reimbursement from the Organiza-
12 tion for providing such services, facilities, and per-
13 sonnel.

14 **SEC. 6. RULEMAKING.**

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

21 **SEC. 7. PROHIBITED ACTS AND PENALTIES.**

22 (a) PROHIBITION.—It is unlawful for any person or
23 vessel that is subject to the jurisdiction of the United
24 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
7 any search or inspection in connection with the en-
8 forcement of this title, any regulation issued under
9 this title, or any measure that is legally binding on
10 the United States under the Convention;

11 (3) forcibly to assault, resist, oppose, impede,
12 intimidate, 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
19 possession of, any fish taken or retained in violation
20 of 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
3 to the United States for a civil penalty, or may be subject
4 to a permit sanction, under section 308 of the Magnuson
5 Act (16 U.S.C. 1858).

6 (c) CRIMINAL PENALTY.—Any person who commits
7 an act that is unlawful under paragraph (2), (3), (4), or
8 (6) of subsection (a) shall be guilty of an offense punish-
9 able 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
13 gear, furniture, appurtenances, stores, and cargo)
14 used in the commission of an act that is unlawful
15 under subsection (a), and any fish (or the fair mar-
16 ket value thereof) taken or retained, in any manner,
17 in connection with or as a result of the commission
18 of any act that is unlawful under subsection (a),
19 shall be subject to seizure and forfeiture as provided
20 in section 310 of the Magnuson Act (16 U.S.C.
21 1860).

22 (2) DISPOSAL OF FISH.—Any fish seized pursu-
23 ant to this title may be disposed of pursuant to the
24 order of a court of competent jurisdiction or, if per-

1 ishable, in a manner prescribed by regulations issued
2 by the Secretary.

3 (e) ENFORCEMENT.—The Secretary and the Sec-
4 retary of the department in which the Coast Guard is op-
5 erating shall enforce the provisions of this title and shall
6 have the authority specified in sections 311 (a), (b)(1),
7 and (c) of the Magnuson Act (16 U.S.C. 1861 (a), (b)(1),
8 and (c)) for that purpose.

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

13 (1) enter restraining orders or prohibitions;

14 (2) issue warrants, process in rem, or other
15 process;

16 (3) prescribe and accept satisfactory bonds or
17 other security; and

18 (4) take such other actions as are in the inter-
19 ests of justice.

20 **SEC. 8. CONSULTATIVE COMMITTEE.**

21 (a) ESTABLISHMENT.—The Secretary of State and
22 the Secretary, shall jointly establish a consultative com-
23 mittee to advise the Secretaries on issues related to the
24 Convention.

1 (b) MEMBERSHIP.—(1) The membership of the Com-
2 mittee shall include representatives from the New England
3 and Mid-Atlantic Fishery Management Councils, the
4 States represented on those Councils, the Atlantic States
5 Marine Fisheries Commission, the fishing industry, the
6 seafood processing industry, and others knowledgeable
7 and experienced in the conservation and management of
8 fisheries in the Northwest Atlantic Ocean.

9 (2) TERMS AND REAPPOINTMENT.—Each member of
10 the consultative committee shall serve for a term of two
11 years and shall be eligible for reappointment.

12 (c) DUTIES OF THE COMMITTEE.—Members of the
13 consultative committee may attend—

14 (1) all public meetings of the General Council
15 or the Fisheries Commission;

16 (2) any other meetings to which they are in-
17 vited by the General Council or the Fisheries Com-
18 mission; and

19 (3) all nonexecutive meetings of the United
20 States Commissioners.

21 (d) RELATIONSHIP TO OTHER LAW.—The Federal
22 Advisory Committee Act (5 U.S.C. App.) shall not apply
23 to the consultative committee established under this
24 section.

1 **SEC. 9. ADMINISTRATIVE MATTERS.**

2 (a) PROHIBITION ON COMPENSATION.—A person
3 shall not receive any compensation from the Government
4 by reason of any service of the person as—

5 (1) a Commissioner, Alternate Commissioner,
6 Representative, or Alternative Representative;

7 (2) an expert or adviser authorized under sec-
8 tion 202(e); or

9 (3) a member of the consultative committee es-
10 tablished by section 8.

11 (b) TRAVEL AND EXPENSES.—The Secretary of
12 State shall, subject to the availability of appropriations,
13 pay all necessary travel and other expenses of persons de-
14 scribed in subsection (a)(1) and of not more than six ex-
15 perts and advisers authorized under section 2(e) with re-
16 spect to their actual performance of their official duties
17 pursuant to this title, in accordance with the Federal
18 Travel Regulations and sections 5701, 5702, 5704
19 through 5708, and 5731 of title 5, United States Code.

20 (c) STATUS AS FEDERAL EMPLOYEES.—A person
21 shall not be considered to be a Federal employee by reason
22 of any service of the person in a capacity described in sub-
23 section (a), except for purposes of injury compensation
24 and tort claims liability under chapter 81 of title 5, United
25 States Code, and chapter 17 of title 28, United States
26 Code, respectively.

1 **SEC. 10. DEFINITIONS.**

2 In this title the following definitions apply:

3 (1) AUTHORIZED ENFORCEMENT OFFICER.—

4 The term “authorized enforcement officer” means a
5 person authorized to enforce this title, any regula-
6 tion issued under this title, or any measure that is
7 legally binding on the United States under the Con-
8 vention.

9 (2) COMMISSIONER.—The term “Commis-
10 sioner” means a United States Commissioner to the
11 Northwest Atlantic Fisheries Organization appointed
12 under section 2(a).

13 (3) CONVENTION.—The term “Convention”
14 means the Convention on Future Multilateral Co-
15 operation in the Northwest Atlantic Fisheries, done
16 at Ottawa on October 24, 1978.

17 (4) FISHERIES COMMISSION.—The term “Fish-
18 eries Commission” means the Fisheries Commission
19 provided for by Articles II, XI, XII, XIII, and XIV
20 of the Convention.

21 (5) GENERAL COUNCIL.—The term “General
22 Council” means the General Council provided for by
23 Article II, III, IV, and V of the Convention.

24 (6) MAGNUSON ACT.—The term “Magnuson
25 Act” means the Magnuson Fishery Conservation and
26 Management Act (16 U.S.C. 1801 et seq.).

1 (7) ORGANIZATION.—The term “Organization”
2 means the Northwest Atlantic Fisheries Organiza-
3 tion provided for by Article II of the Convention.

4 (8) PERSON.—The term “person” means any
5 individual (whether or not a citizen or national of
6 the United States), and any corporation, partner-
7 ship, association, or other entity (whether or not or-
8 ganized or existing under the laws of any State).

9 (9) REPRESENTATIVE.—The term “Representa-
10 tive” means a United States Representative to the
11 Northwest Atlantic Fisheries Scientific Council ap-
12 pointed under section 2(c).

13 (10) SCIENTIFIC COUNCIL.—The term “Sci-
14 entific Council” means the Scientific Council pro-
15 vided for by Articles II, VI, VII, VIII, IX, and X of
16 the Convention.

17 (11) SECRETARY.—The term “Secretary”
18 means the Secretary of Commerce.

19 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

20 There are authorized to be appropriated to carry out
21 this title, including use for payment as the United States
22 contribution to the Organization as provided in Article
23 XVI of the Convention, \$500,000 for each of the fiscal
24 years 1995, 1996, 1997, and 1998.