

AMENDMENT TO H.R. 69

OFFERED BY Ms. Bordallo

Page 4, at line 4 strike “and”, at line 7 strike the second period and insert “; and”, and after line 7 insert the following:

1 “(10) the North Pacific Halibut Act of 1982
2 (16 U.S.C. 773a et seq.).

Page 4, line 8, strike “The” and insert the following:

3 “(1) IN GENERAL.—The

Page 4, after line 16, insert the following:

4 “(2) INTERNATIONAL COOPERATION.—The Sec-
5 retary may, subject to appropriations and in the
6 course of carrying out the Secretary’s responsibilities
7 under the Acts to which this section applies, engage
8 in international cooperation to help other nations
9 combat illegal, unreported, and unregulated fishing
10 and achieve sustainable fisheries.

Beginning at page 4, strike line 18 and all that follows through page 5, line 2, and redesignate the subse-

quent quoted paragraphs as paragraphs (1) and (2), respectively.

Page 5, beginning at line 8, strike “to enforce” and insert “may enforce”.

Page 5, line 10, strike “ may”.

Beginning at page 5, line 14, strike “Act—” and all that follows through page 6, line 22, and insert “Act.”.

Page 6, line 24, after “The Secretary” insert “, subject to the data confidentiality provisions in section 402 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1881a),”.

Page 8, line 12, before the period insert “to the extent the enforcement action is consistent with rules and regulations of a regional fishery management organization that the United States is a member of, or the Secretary has determined that the enforcement action is consistent with the requirements under Federal law for enforcement actions with respect to illegal, unreported, and unregulated fishing”.

Page 8, beginning at line 19, strike “aircraft, vehicle, or shoreside facility”.

Page 10, line 24, after “The Secretary” insert “, subject to the data confidentiality provisions in section

402 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1881a),”.

Page 13, beginning at line 19, strike “(A) in the matter preceding paragraph (1), by” and insert the following:

1 (A) in the matter preceding paragraph
2 (1)—
3 (i) by inserting “, based on a cumu-
4 lative compilation and analysis of data col-
5 lected and provided by international fishery
6 management organizations and other na-
7 tions and organizations,” after “shall”;
8 and
9 (ii) by

Beginning at page 15, strike line 16 and all that follows through page 16, line 1, and insert the following:

10 (h) AUTHORIZATION OF APPROPRIATIONS.—There is
11 authorized to be appropriated to the Secretary of Com-
12 merce \$450,000 for each of fiscal years 2015 through
13 2019 to implement the amendments made by subsections
14 (b) and (g).

Page 17, strike lines 1 through 5 (and redesignate the subsequent subparagraph accordingly).

Page 27, line 13, strike “(a) PROHIBITED ACTS.—
”.

Beginning at page 28, strike line 5 and all that follows through page 29, line 2 (and redesignate the subsequent sections accordingly).

Beginning at page 30, line 5, strike section 114.

Page 40, line 22, after “regulations” insert “as may be necessary to carry out the United States international obligations under the Convention and this Act,”.

Page 41, line 2, after “regulations” insert “as may be necessary to carry out the United States international obligations under the Convention and this Act,”.

Add at the end the following:

1 **TITLE III—AGREEMENT ON**
2 **PORT STATE MEASURES TO**
3 **PREVENT, DETER AND ELIMI-**
4 **NATE ILLEGAL, UNREPORTED**
5 **AND UNREGULATED FISHING**

6 **SEC. 301. SHORT TITLE.**

7 This title may be cited as the “Port State Measures
8 Agreement Act of 2014”.

1 **SEC. 302. PURPOSE.**

2 The purpose of this title is to implement the Agree-
3 ment on Port State Measures to Prevent, Deter and
4 Eliminate Illegal, Unreported and Unregulated Fishing.

5 **SEC. 303. DEFINITIONS.**

6 As used in this title:

7 (1) The term “Agreement” means the Agree-
8 ment on Port State Measures to Prevent, Deter and
9 Eliminate Illegal, Unreported and Unregulated Fish-
10 ing, done at the Food and Agriculture Organization
11 of the United Nations, in Rome, Italy, November 22,
12 2009, and signed by the United States November
13 22, 2009.

14 (2) The term “IUU fishing” means any activity
15 set out in paragraph 3 of the 2001 FAO Inter-
16 national Plan of Action to Prevent, Deter and Elim-
17 inate Illegal, Unreported and Unregulated Fishing.

18 (3) The term “listed IUU vessel” means a ves-
19 sel that is included in a list of vessels having en-
20 gaged in IUU fishing or fishing-related activities in
21 support of IUU fishing that has been adopted by a
22 regional fisheries management organization of which
23 the United States is a member, or a list adopted by
24 a regional fisheries management organization of
25 which the United States is not a member if the Sec-
26 retary determines the criteria used by that organiza-

1 tion to create the IUU list is comparable to United
2 States criteria for identifying IUU vessels and activi-
3 ties.

4 (4) The term “Magnuson-Stevens Act” means
5 the Magnuson-Stevens Fishery Conservation and
6 Management Act (16 U.S.C. 1801 et seq.).

7 (5) The term “person” has the same meaning
8 as that term has in section 3 of the Magnuson-Ste-
9 vens Act (16 U.S.C. 1802).

10 (6) The term “RFMO” means a regional fish-
11 eries management organization.

12 (7) The term “Secretary” means the Secretary
13 of Commerce or his or her designee.

14 (8) The term “vessel” means any vessel, ship of
15 another type, or boat used for, equipped to be used
16 for, or intended to be used for, fishing or fishing-re-
17 lated activities, including container vessels that are
18 carrying fish that have not been previously landed.

19 (9) The term “fish” means finfish, mollusks,
20 crustaceans, and all other forms of marine animal
21 and plant life other than marine mammals and
22 birds.

23 (10) The term “fishing”—

24 (A) except as provided in subparagraph

25 (B), means—

1 (i) the catching, taking, or harvesting
2 of fish;

3 (ii) the attempted catching, taking, or
4 harvesting of fish;

5 (iii) any other activity which can rea-
6 sonably be expected to result in the catch-
7 ing, taking, or harvesting of fish; or

8 (iv) any operations at sea in support
9 of, or in preparation for, any activity de-
10 scribed in clauses (i) through (iii).

11 (B) does not include any scientific research
12 activity that is conducted by a scientific re-
13 search vessel.

14 **SEC. 304. DUTIES AND AUTHORITIES OF THE SECRETARY.**

15 (a) REGULATIONS.—The Secretary may, as needed,
16 promulgate such regulations, in accordance with section
17 553 of title 5, United States Code, and consistent with
18 the provisions of this title, as may be necessary to carry
19 out the purposes of this title to the extent that such regu-
20 lations are not already promulgated.

21 (b) CONSULTATION; UTILIZATION OF EXISTING RE-
22 PORTING MECHANISMS.—In promulgating regulations,
23 procedures, and guidance pursuant to subsection (a), the
24 Secretary shall consult with the Secretary of State and
25 the Secretary of the department in which the Coast Guard

1 is operating. To the maximum extent possible and subject
2 to the data confidentiality provisions in section 402 of the
3 Magnuson-Stevens Fishery Conservation and Manage-
4 ment Act (16 U.S.C. 1881a), such procedures shall utilize
5 existing reporting mechanisms maintained and operated
6 by the department in which the Coast Guard is operating.

7 (c) PORTS OF ENTRY.—The Secretary, in consulta-
8 tion with the Secretary of Homeland Security and, when
9 the Coast Guard is not operating in the Department of
10 Homeland Security, the Secretary of the department in
11 which the Coast Guard is operating, may designate and
12 publicize the ports to which vessels may seek entry. No
13 port may be designated under this section that has not
14 also been designated as a port of entry for customs report-
15 ing purposes pursuant to section 1433 of title 19, United
16 States Code, or that is not specified under an existing
17 international fisheries agreement.

18 (d) NOTIFICATION.—The Secretary shall provide no-
19 tification of the denial of port entry or the use of port
20 services for a vessel under section 305, the withdrawal of
21 the denial of port services for a vessel, the taking of en-
22 forcement action pursuant to section 306 with respect to
23 a vessel, or the results of any inspection of a vessel con-
24 ducted pursuant to this title to the flag nation of the vessel
25 and, as appropriate, to the nation of which the vessel's

1 master is a national, relevant coastal nations, RFMOs, the
2 Food and Agriculture Organization of the United Nations,
3 and other relevant international organizations.

4 (e) CONFIRMATION THAT FISH WERE TAKEN IN AC-
5 CORDANCE WITH CONSERVATION AND MANAGEMENT
6 MEASURES.—The Secretary may request confirmation
7 from the flag state of a vessel that the fish on board a
8 vessel in a port subject to the jurisdiction of the United
9 States were taken in accordance with applicable RFMO
10 conservation and management measures.

11 **SEC. 305. AUTHORIZATION OR DENIAL OF PORT ENTRY.**

12 (a) SUBMISSION OF INFORMATION REQUIRED
13 UNDER AGREEMENT.—All foreign vessels seeking entry to
14 a port subject to the jurisdiction of the United States must
15 submit to the Secretary of the department in which the
16 Coast Guard is operating information as required under
17 the Agreement in advance of its arrival in port.

18 (b) DECISION TO AUTHORIZE OR DENY PORT
19 ENTRY.—The Secretary shall decide, based on the infor-
20 mation submitted under subsection (a), whether to author-
21 ize or deny port entry and shall communicate this decision
22 to the foreign vessel or to its representative. The Secretary
23 may deny entry to—

24 (1) any foreign-listed IUU vessel; or

1 (2) any foreign vessel the Secretary has reason-
2 able grounds to believe has engaged in IUU fishing
3 or fishing-related activities in support of such fishing
4 or has violated the Act.

5 (c) DENIAL OF USE OF PORT.—If a foreign vessel
6 is in a port subject to the jurisdiction of the United States,
7 the Secretary shall deny such vessel the use of the port
8 for landing, transshipment, packaging and processing of
9 fish, refueling, resupplying, maintenance and drydocking,
10 if—

11 (1) the vessel entered without authorization
12 under subsection (b);

13 (2) the vessel is a listed IUU vessel;

14 (3) the flag nation of the vessel has failed to
15 provide confirmation requested by the Secretary that
16 the fish on board were taken in accordance with ap-
17 plicable RFMO conservation and management meas-
18 ures; or

19 (4) the Secretary has reasonable grounds to be-
20 lieve—

21 (A) the vessel lacks valid authorizations to
22 engage in fishing or fishing-related activities as
23 required by its flag nation or the relevant coast-
24 al nation;

1 (B) the fish on board were taken in viola-
2 tion of foreign law or in contravention of any
3 RFMO conservation and management measure;
4 or

5 (C) the vessel has engaged in IUU fishing
6 or fishing-related activities in support of such
7 fishing, including in support of a listed IUU
8 vessel, unless it can establish that—

9 (i) it was acting in a manner con-
10 sistent with applicable RFMO conservation
11 and management measures; or

12 (ii) in the case of the provision of per-
13 sonnel, fuel, gear, and other supplies at
14 sea, the vessel provisioned was not, at the
15 time of provisioning, a listed IUU vessel.

16 (d) EXCEPTIONS.—Notwithstanding subsections (b)
17 and (c), the Secretary may allow port entry or the use
18 of port services—

19 (1) if they are essential to the safety or health
20 of the crew or safety of the vessel;

21 (2) to allow, where appropriate, for the scrap-
22 ping of the vessel; or

23 (3) pursuant to an inspection or other enforce-
24 ment action.

1 **SEC. 306. INSPECTIONS.**

2 The Secretary, and the Secretary of the department
3 in which the Coast Guard is operating, shall conduct for-
4 eign vessel inspections in ports subject to the jurisdiction
5 of the United States as necessary to achieve the purposes
6 of the Agreement and this title. If, following an inspection,
7 the Secretary has reasonable grounds to believe that a for-
8 eign vessel has engaged in IUU fishing or fishing-related
9 activities in support of such fishing, the Secretary may
10 take enforcement action under this title or other applicable
11 law, and shall deny the vessel the use of port services, in
12 accordance with section 305.

13 **SEC. 307. PROHIBITED ACTS.**

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

16 (1) to violate any provision of this title or the
17 regulations issued under this title;

18 (2) to refuse to permit any authorized officer to
19 board, search, or inspect a vessel that is subject to
20 the person's control in connection with the enforce-
21 ment of this title or the regulations issued under
22 this title;

23 (3) to submit false information pursuant to any
24 requirement under this title or the regulations issued
25 under this title; or

1 (4) to commit any offense enumerated in para-
2 graph (4), (5), (7) or (9) of section 707(a) of the
3 Western and Central Pacific Fisheries Convention
4 Implementation Act (16 U.S.C. 6906(a)).

5 **SEC. 308. ENFORCEMENT.**

6 (a) **EXISTING AUTHORITIES AND RESPONSIBIL-**
7 **ITIES.**—The authorities and responsibilities under sub-
8 sections (a), (b), and (c) of section 311 and section 308(f)
9 of the Magnuson-Stevens Act (16 U.S.C. 1861, 1858(f))
10 shall apply with respect to enforcement of this title.

11 (b) **CIVIL ENFORCEMENT.**—

12 (1) **CIVIL ADMINISTRATIVE PENALTIES.**—

13 (A) **IN GENERAL.**—Any person who is
14 found by the Secretary (after notice and oppor-
15 tunity for a hearing in accordance with section
16 554 of title 5, United States Code) to have
17 committed an act prohibited under section 307
18 shall be liable to the United States for a civil
19 penalty. The amount of the civil penalty shall
20 be consistent with the amount under section
21 308(a) of the Magnuson-Stevens Act (16 U.S.C.
22 1858(a)).

23 (B) **COMPROMISE OR OTHER ACTION BY**
24 **SECRETARY.**—The Secretary shall have the
25 same authority as provided in section 308(e) of

1 the Magnuson-Stevens Act (16 U.S.C. 1858(e))
2 with respect to a violation of this Act.

3 (2) IN REM JURISDICTION.—For purposes of
4 this title, the conditions for in rem liability shall be
5 consistent with section 308(d) of the Magnuson-Ste-
6 vens Act (16 U.S.C. 1858(d)).

7 (3) ACTION UPON FAILURE TO PAY ASSESS-
8 MENT.—If any person fails to pay an assessment of
9 a civil penalty under this title after it has become a
10 final and unappealable order, or after the appro-
11 priate court has entered final judgment in favor of
12 the Secretary, the Secretary shall refer the matter to
13 the Attorney General, who shall recover the amount
14 assessed in any appropriate district court of the
15 United States. In such action, the validity and ap-
16 propriateness of the final order imposing the civil
17 penalty shall not be subject to review.

18 (c) FORFEITURE.—

19 (1) IN GENERAL.—The forfeiture provisions of
20 section 310 of the Magnuson-Stevens Act (16 U.S.C.
21 1860) shall apply in cases in which a person is con-
22 victed of an offense in violation of section 309.

23 (2) APPLICATION OF THE CUSTOMS LAWS.—All
24 provisions of law relating to seizure, summary judg-
25 ment, and judicial forfeiture and condemnation for

1 violation of the customs laws, the disposition of the
2 property forfeited or condemned or the proceeds
3 from the sale thereof, the remission or mitigation of
4 such forfeitures, and the compromise of claims shall
5 apply to seizures and forfeitures incurred, or alleged
6 to have been incurred, under the provisions of this
7 title, insofar as applicable and not inconsistent with
8 the provisions hereof. For seizures and forfeitures of
9 property under this section by the Secretary, such
10 duties as are imposed upon the customs officer or
11 any other person with respect to the seizure and for-
12 feiture of property under the customs law may be
13 performed by such officers as are designated by the
14 Secretary or, upon request of the Secretary, by any
15 other agency that has authority to manage and dis-
16 pose of seized property.

17 (3) PRESUMPTION.—For the purposes of this
18 section there is a rebuttable presumption that all
19 fish, or components thereof, found on board a vessel
20 that is used or seized in connection with a violation
21 of this title (including any regulation promulgated
22 under this Act) were taken, obtained, or retained as
23 a result of IUU fishing or fishing-related activities
24 in support of IUU fishing.

1 (d) CRIMINAL ENFORCEMENT.—Any person (other
2 than a foreign government agency, or entity wholly owned
3 by a foreign government) who knowingly commits an act
4 prohibited by section 309 shall be subject to subsections
5 (b) and (c) of section 309 of the Magnuson-Stevens Act
6 (16 U.S.C. 1859).

7 (e) PAYMENT OF STORAGE, CARE, AND OTHER
8 COSTS.—Any person assessed a civil penalty for, or con-
9 victed of, any violation of this title (including any regula-
10 tion promulgated under this title) and any claimant in a
11 forfeiture action brought for such a violation, shall be lia-
12 ble for the reasonable costs incurred by the Secretary in
13 storage, care, and maintenance of any property seized in
14 connection with the violation.

15 **SEC. 309. INTERNATIONAL COOPERATION AND ASSIST-**
16 **ANCE.**

17 (a) ASSISTANCE TO DEVELOPING NATIONS AND
18 INTERNATIONAL ORGANIZATIONS.—Consistent with exist-
19 ing authority and the availability of funds, the Secretary
20 shall provide appropriate assistance to developing nations
21 and international organizations of which such nations are
22 members to assist those nations in meeting their obliga-
23 tions under the Agreement.

24 (b) PERSONNEL, SERVICES, EQUIPMENT, AND FA-
25 CILITIES.—In carrying out subsection (a), the Secretary

1 may, by agreement, on a reimbursable or nonreimbursable
2 basis, utilize the personnel, services, equipment, and facili-
3 ties of any Federal, State, local, or foreign government
4 or any entity of any such government.

5 **SEC. 310. RELATIONSHIP TO OTHER LAWS.**

6 (a) **IN GENERAL.**—Nothing in this title shall be con-
7 strued to displace any requirements imposed by the cus-
8 toms laws of the United States or any other laws or regu-
9 lations enforced or administered by the Secretary of
10 Homeland Security. Where more stringent requirements
11 regarding port entry or access to port services exist under
12 other Federal law, those more stringent requirements shall
13 apply. Nothing in this title shall affect a vessel's entry into
14 port, in accordance with international law, for reasons of
15 force majeure or distress.

16 (b) **UNITED STATES OBLIGATIONS UNDER INTER-**
17 **NATIONAL LAW.**—This title shall be interpreted and ap-
18 plied in accordance with United States obligations under
19 international law.

