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S. 1980

To prevent, deter, and eliminate illegal, unreported, and unregulated fishing through port State measures.

IN THE SENATE OF THE UNITED STATES

DECEMBER 12, 2011

Mr. INOUE (for himself, Mr. BEGICH, Mr. WHITEHOUSE, Ms. SNOWE, Ms. MURKOWSKI, Mr. ROCKEFELLER, Mr. AKAKA, Ms. CANTWELL, Mr. WYDEN, and Mr. UDALL of New Mexico) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

NOVEMBER 14, 2012

Reported by Mr. ROCKEFELLER, without amendment

A BILL

To prevent, deter, and eliminate illegal, unreported, and unregulated fishing through port State measures.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “The Pirate Fishing Elimination Act”.

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Purpose.
- Sec. 3. Definitions.
- Sec. 4. Application.
- Sec. 5. Duties of the Secretary.
- Sec. 6. Advance notice of vessel arrival, authorization, or denial of port entry.
- Sec. 7. Denial of port services.
- Sec. 8. Inspections.
- Sec. 9. Prohibited acts.
- Sec. 10. Enforcement.
- Sec. 11. International cooperation and assistance.
- Sec. 12. Relationship to other laws.
- Sec. 13. Authorization of appropriations.

3 **SEC. 2. PURPOSE.**

4 The purpose of this Act is to implement the Agree-
 5 ment on Port State Measures to Prevent, Deter and
 6 Eliminate Illegal, Unreported and Unregulated Fishing,
 7 done at the Food and Agriculture Organization of the
 8 United Nations in Rome, Italy on November 22, 2009.

9 **SEC. 3. DEFINITIONS.**

10 In this Act:

11 (1) AGREEMENT.—The term “Agreement”
 12 means the Agreement on Port State Measures to
 13 Prevent, Deter and Eliminate Illegal, Unreported
 14 and Unregulated Fishing, done at the Food and Ag-
 15 riculture Organization of the United Nations in
 16 Rome, Italy on November 22, 2009.

17 (2) AUTHORIZED OFFICER.—The term “author-
 18 ized officer” means—

1 (A) any commissioned, warrant, or petty
2 officer of the United States Coast Guard;

3 (B) any special agent or fishery enforce-
4 ment officer of National Marine Fisheries Serv-
5 ice; or

6 (C) any officer designated by the head of
7 any Federal or State agency that has entered
8 into an agreement with the Secretary to enforce
9 the provisions of the Magnuson-Stevens Fishery
10 Conservation and Management Act (16 U.S.C.
11 1801 et seq.), or any other statute administered
12 by the National Oceanic and Atmospheric Ad-
13 ministration.

14 (3) CONSERVATION AND MANAGEMENT MEAS-
15 URES.—The term “conservation and management
16 measures” means binding measures to conserve and
17 manage living marine resources adopted by an
18 RFMO.

19 (4) CONTAINER VESSEL.—The term “container
20 vessel” means a self-propelled ocean-going vessel
21 constructed or adapted primarily to carry ocean
22 freight containers.

23 (5) FAO.—The term “FAO” means the Food
24 and Agriculture Organization of the United Nations.

1 (6) FISH.—The term “fish” includes all species
2 of living marine resources, whether processed or not.

3 (7) FISHING.—The term “fishing” means
4 searching for, attracting, locating, catching, taking,
5 or harvesting fish or any activity which can reason-
6 ably be expected to result in the attracting, locating,
7 catching, taking, or harvesting of fish.

8 (8) FISHING-RELATED ACTIVITY.—The term
9 “fishing-related activity” means any operation in
10 support of, or in preparation for, fishing, includ-
11 ing—

12 (A) the landing, packaging, processing,
13 transshipping, or transporting of fish that have
14 not been previously landed at a port or place;
15 and

16 (B) the provision of personnel, fuel, gear,
17 and other supplies at sea.

18 (9) FOREIGN VESSEL.—The term “foreign ves-
19 sel” means any vessel except for a vessel of the
20 United States.

21 (10) ILLEGAL, UNREPORTED, AND UNREGU-
22 LATED FISHING OR IUU FISHING.—The term “ille-
23 gal, unreported, and unregulated fishing” or “IUU
24 fishing” means any activity—

1 (A) conducted by a national or foreign ves-
2 sel in waters under the jurisdiction of a nation
3 without the permission of that nation, or in
4 contravention of its laws and regulations, in-
5 cluding an activity that has not been reported
6 or has been misreported to the relevant national
7 authority of that nation in contravention of its
8 laws and regulations;

9 (B) conducted by a vessel flying the flag of
10 a nation that is a member of an RFMO in con-
11 travention of the conservation and management
12 measures adopted by the RFMO and by which
13 that nation is bound, including an activity that
14 has not been reported or has been misreported
15 in contravention of the reporting requirements
16 of that RFMO;

17 (C) conducted by a vessel flying the flag of
18 a nation that is a cooperating non-member of
19 an RFMO that is inconsistent with the commit-
20 ments undertaken by that nation as a cooper-
21 ating non-member of that RFMO, including an
22 activity that has not been reported or has been
23 misreported in a manner that is inconsistent
24 with those commitments; or

1 (D) conducted in the area of application of
2 an RFMO by a vessel without nationality, or by
3 a vessel flying the flag of a nation that is not
4 a member nor a cooperating non-member of
5 that RFMO and that undermines the effective-
6 ness of the conservation and management meas-
7 ures of that RFMO.

8 (11) LANDING.—The term “landing” means to
9 begin to offload fish or to offload fish from any ves-
10 sel in port or at a dock, berth, beach seawall or
11 ramp, but does not include transshipment.

12 (12) LISTED IUU VESSEL.—The term “listed
13 IUU vessel” means a vessel that is included in a list,
14 adopted by a regional fisheries management organi-
15 zation, of vessels having engaged in IUU fishing or
16 fishing-related activities in support of IUU fishing.

17 (13) PARTY.—The term “Party” means a gov-
18 ernment or regional economic integration organiza-
19 tion for which the Agreement is in force.

20 (14) PERSON.—The term “person” means any
21 individual (whether or not a citizen or national of
22 the United States), corporation, partnership, asso-
23 ciation, or other entity (whether or not organized or
24 existing under the laws of any State) and any Fed-

1 eral, State, local, or foreign government or any enti-
2 ty of any such government.

3 (15) PORT.—The term “port” includes a
4 roadstead, an offshore terminal, and any other in-
5 stallation or place for landing, transshipping, pack-
6 aging, processing, refueling, or resupplying.

7 (16) PREVIOUSLY LANDED.—The term “pre-
8 viously landed” means landed in a port or at a dock,
9 berth, beach seawall, or ramp and subsequently load-
10 ed onto a container or other carrier vessel.

11 (17) PROCESSING.—The term “processing”
12 means the preparation or packaging of fish to render
13 the fish suitable for human consumption, retail sale,
14 industrial uses, export, or long-term storage, includ-
15 ing cooking, canning, smoking, salting, drying,
16 filleting, packaging, freezing, or rendering into meal
17 or oil.

18 (18) REGIONAL FISHERIES MANAGEMENT OR-
19 GANIZATION OR RFMO.—The term “regional fish-
20 eries management organization” or “RFMO” means
21 an intergovernmental fisheries organization or ar-
22 rangement, as appropriate, that has the competence
23 to establish conservation and management measures.

1 (19) SECRETARY.—The term “Secretary”
2 means the Secretary of Commerce or the Secretary
3 of Commerce’s designee.

4 (20) STATE.—The term “State” means each of
5 the several States, the District of Columbia, the
6 Commonwealth of Puerto Rico, American Samoa,
7 the Virgin Islands, Guam, the Northern Mariana Is-
8 lands, and any other Commonwealth, territory, or
9 possession of the United States.

10 (21) TRANSSHIPMENT.—The term “trans-
11 shipment” means to offload and onload or otherwise
12 transfer fish or a fish product from one vessel to an-
13 other vessel.

14 (22) VESSEL.—The term “vessel” means any
15 vessel, ship, or boat used, equipped, or intended for
16 fishing or a fishing-related activity.

17 (23) VESSEL OF THE UNITED STATES.—

18 (A) IN GENERAL.—The term “vessel of the
19 United States” means—

20 (i) a vessel documented under chapter
21 121 of title 46, United States Code, or
22 numbered in accordance with chapter 123
23 of title 46, United States Code; or

24 (ii) a vessel owned in whole or in part
25 by—

- 1 (I) the United States;
- 2 (II) a State or political subdivi-
- 3 sion of a State;
- 4 (III) a citizen or national of the
- 5 United States; or
- 6 (IV) a corporation created under
- 7 the laws of the United States or any
- 8 State.

9 (B) EXCLUSIONS.—The term “vessel of

10 the United States” does not include a vessel

11 that has been granted the nationality of a for-

12 eign nation consistent with international law

13 and a claim of nationality or registry for the

14 vessel has been made by the master or indi-

15 vidual in charge at the time of the enforcement

16 action by an officer or employee of the United

17 States authorized to enforce applicable provi-

18 sions of the United States law.

19 **SEC. 4. APPLICATION.**

20 (a) IN GENERAL.—This Act shall apply to—

- 21 (1) each foreign vessel seeking entry to or in a
- 22 port subject to the jurisdiction of the United States;
- 23 (2) each vessel of the United States seeking
- 24 entry to or in a port subject to the jurisdiction of
- 25 another Party to the Agreement; and

1 (3) each person subject to the jurisdiction of
2 the United States.

3 (b) **EXCLUSIONS.**—Notwithstanding subsection (a),
4 this Act shall not apply to—

5 (1) a container vessel that is not carrying fish;
6 or

7 (2) a container vessel that—

8 (A) is carrying only fish that have been
9 previously landed; and

10 (B) the Secretary has no clear grounds to
11 suspect has been engaged in IUU fishing or
12 fishing-related activities in support of IUU fish-
13 ing.

14 **SEC. 5. DUTIES OF THE SECRETARY.**

15 (a) **REGULATIONS.**—The Secretary may promulgate
16 such regulations, in accordance with section 553 of title
17 5, United States Code, as may be necessary to carry out
18 the purposes of this Act.

19 (b) **PROCEDURES.**—The Secretary, in consultation
20 with the Secretary of State and the Secretary of the de-
21 partment in which the Coast Guard is operating, shall de-
22 velop procedures for making determinations and notifica-
23 tions as may be necessary to carry out the purposes of
24 this Act.

25 (c) **FOREIGN VESSEL ENTRY.**—

1 (1) IN GENERAL.—The Secretary (in consulta-
2 tion with the Secretary of Homeland Security or if
3 the Coast Guard is not operating in the Department
4 of Homeland Security, in consultation with the Sec-
5 retary of the department in which the Coast Guard
6 is operating) may designate and publicize each port
7 to which a vessel described in section 4 may seek
8 entry. The Secretary shall not designate a port
9 under this subsection unless the port is designated
10 as a port of entry for customs reporting purposes
11 under section 433 of the Tariff Act of 1930 (19
12 U.S.C. 1433).

13 (2) LIST OF DESIGNATED PORTS.—The Sec-
14 retary shall provide a list of each port designated
15 under paragraph (1) to FAO.

16 (d) ELECTRONIC EXCHANGE OF INFORMATION.—In
17 order to implement the requirements of the Agreement re-
18 garding electronic exchange of information, the Secretary
19 is authorized to designate a point of contact and notify
20 FAO of that designation. The Secretary may cooperate,
21 including by providing financial assistance, in efforts to
22 establish an information-sharing mechanism and to facili-
23 tate the exchange of information with existing databases
24 relevant to the Agreement.

1 (e) INFORMATION ON AVAILABLE RECOURSE.—The
2 Secretary shall maintain information regarding any legal
3 remedy available to a person who is affected by an action
4 under this Act. The Secretary shall make the information
5 publicly accessible and, upon written request, shall provide
6 the information to the owner, operator, master, or rep-
7 resentative of a vessel.

8 **SEC. 6. ADVANCE NOTICE OF VESSEL ARRIVAL, AUTHOR-**
9 **IZATION, OR DENIAL OF PORT ENTRY.**

10 (a) ADVANCE NOTICE OF VESSEL ARRIVAL.—Each
11 vessel described in section 4(a) shall submit to the Sec-
12 retary of the department in which the Coast Guard is op-
13 erating information required under the Agreement in ad-
14 vance of the vessel's arrival in a port. The Secretary shall,
15 in consultation with the Secretary of the Department in
16 which the Coast Guard is operating and the Secretary of
17 State, promulgate regulations to establish a procedure
18 that requires each foreign vessel seeking entry into a U.S.
19 port to submit, at a minimum, the information required
20 under the Agreement in advance of the vessel's arrival in
21 a port. The procedure shall utilize, to the maximum extent
22 possible, existing reporting mechanisms maintained and
23 operated by the department in which the Coast Guard is
24 operating.

25 (b) AUTHORIZATION OR DENIAL OF PORT ENTRY.—

1 (1) IN GENERAL.—In conformance with the
2 procedures under section 5(b) the Secretary shall—

3 (A) decide whether to authorize or deny
4 port entry; and

5 (B) communicate the decision to the vessel
6 or its representative in accordance with the pro-
7 cedure under subsection (a).

8 (2) DENIAL OF ENTRY.—The Secretary may
9 deny entry to—

10 (A) any listed IUU vessel;

11 (B) any vessel that the Secretary has rea-
12 sonable grounds to believe has engaged in IUU
13 fishing or fishing-related activities in support of
14 IUU fishing; or

15 (C) any vessel that the Secretary has rea-
16 sonable grounds to believe has violated this Act.

17 (3) PERMISSIBLE ENTRY.—Notwithstanding
18 paragraph (2), the Secretary may allow a vessel
19 entry into port—

20 (A) for the purpose of rendering assistance
21 to a vessel or person in danger or distress;

22 (B) for the scrapping of the vessel, as ap-
23 propriate; or

24 (C) for inspection or other enforcement ac-
25 tion.

1 (c) NOTICE.—If entry is denied under subsection (b),
2 the Secretary shall provide notice of the decision to the
3 flag nation of the vessel and, as appropriate, to each rel-
4 evant coastal nation, RFMO, and other international orga-
5 nization.

6 **SEC. 7. DENIAL OF PORT SERVICES.**

7 (a) IN GENERAL.—A vessel that has been granted
8 authorization to enter port under section 6 or that is oth-
9 erwise in a port subject to the jurisdiction of the United
10 States shall be denied, by the Secretary, the use of the
11 port for landing, transshipment, packaging and processing
12 of fish, refueling, resupplying, maintenance, and
13 drydocking, if—

14 (1) the vessel entered port without authoriza-
15 tion under section 6;

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

17 (3) the Secretary has reasonable grounds to be-
18 lieve that the vessel lacks valid authorizations to en-
19 gage in fishing or fishing-related activities as re-
20 quired by its flag nation or the relevant coastal na-
21 tion;

22 (4) the Secretary has reasonable grounds to be-
23 lieve that the fish on board the vessel were taken in
24 violation of foreign law or in contravention of any
25 conservation and management measures;

1 (5) the Secretary requested confirmation from
2 the flag nation that the fish on board were taken in
3 accordance with applicable conservation and man-
4 agement measures, and the flag nation failed to pro-
5 vide confirmation in accordance with regulations
6 promulgated under this Act; or

7 (6) the Secretary has reasonable grounds to be-
8 lieve that the vessel has engaged in IUU fishing or
9 fishing-related activities in support of IUU fishing,
10 including in support of a listed IUU vessel, unless
11 the vessel can establish that—

12 (A) the vessel was acting in a manner con-
13 sistent with applicable conservation and man-
14 agement measures; or

15 (B) in the case of the provision of per-
16 sonnel, fuel, gear, and other supplies at sea, the
17 vessel provisioned was not, at the time of provi-
18 sioning, a listed IUU vessel.

19 (b) PERMISSIBLE USE OF PORT SERVICES.—Not-
20 withstanding subsection (a), the Secretary may allow the
21 use of port services—

22 (1) if the vessel has established that the serv-
23 ices are essential to the safety or health of the crew
24 or safety of the vessel;

1 (2) for the scrapping of the vessel, as appro-
2 priate; or

3 (3) for inspection or other enforcement action.

4 (c) NOTICE.—If use of port services is denied under
5 subsection (a), the Secretary, acting through the Secretary
6 of State, shall provide notice of the decision to the flag
7 nation of the vessel and, as appropriate, to each relevant
8 coastal nation, RFMO, and other international organiza-
9 tion.

10 (d) WITHDRAWAL OF DENIAL.—The Secretary shall
11 withdraw denial of the use of port services if the Secretary
12 determines that the grounds on which the use was denied
13 were inadequate, erroneous, or no longer applicable. The
14 Secretary shall provide notification of the withdrawal
15 promptly to each person that was notified under sub-
16 section (c).

17 **SEC. 8. INSPECTIONS.**

18 (a) INSPECTIONS.—The Secretary and the Secretary
19 of the department in which the Coast Guard is operating
20 shall conduct vessel inspections, as necessary, for the pur-
21 poses of the Agreement and this Act. In conducting a ves-
22 sel inspection, the Secretary may utilize by agreement, on
23 a reimbursable or nonreimbursable basis, the personnel
24 services, equipment (including aircraft and vessels), and
25 facilities of any other Federal agency (including all ele-

1 ments of the Department of Defense), and of any State
2 agency. The Secretary shall prioritize vessel inspections
3 based on—

4 (1) whether a vessel has been denied entry or
5 use of a port in accordance with the Agreement;

6 (2) a request from another relevant Party,
7 State, or RFMO that a certain vessel be inspected,
8 particularly if the request is supported by evidence
9 of IUU fishing or fishing-related activities in sup-
10 port of IUU fishing by the vessel in question; and

11 (3) whether there are clear grounds to suspect
12 that a vessel has engaged in IUU fishing or fishing-
13 related activities in support of IUU fishing.

14 (b) TRANSMITTAL OF INSPECTION RESULTS.—The
15 Secretary shall transmit the results of an inspection under
16 this Act to the flag nation of the inspected vessel and,
17 as appropriate, to—

18 (1) each relevant Party and nation, including a
19 relevant coastal nation and the nation of which the
20 vessel's master is a national;

21 (2) each relevant RFMO;

22 (3) the FAO; and

23 (4) any other relevant international organiza-
24 tion.

1 (c) ACTIONS FOLLOWING INSPECTION.—If, following
2 an inspection, the Secretary has reasonable grounds to be-
3 lieve that a foreign vessel has engaged in IUU fishing or
4 fishing-related activities in support of IUU fishing—

5 (1) the Secretary may take enforcement action
6 under this Act or other applicable law; and

7 (2) the Secretary shall—

8 (A) acting through the Secretary of State,
9 promptly notify the flag nation of the vessel
10 and, as appropriate, each relevant coastal na-
11 tion, RFMO, and other international organiza-
12 tion, and the nation of which the vessel’s mas-
13 ter is a national; and

14 (B) deny the vessel the use of port serv-
15 ices, in accordance with section 7.

16 **SEC. 9. PROHIBITED ACTS.**

17 It is unlawful for any person—

18 (1) to violate any provision of this Act or any
19 regulation promulgated thereunder;

20 (2) to refuse to permit an authorized officer to
21 board, search, or inspect any vessel, conveyance, or
22 shoreside facility that is subject to the person’s con-
23 trol, for the purpose of conducting any search, inves-
24 tigation, or inspection in connection with the en-

1 enforcement of this Act or any regulation promulgated
2 thereunder;

3 (3) to forcibly assault, resist, oppose, impede,
4 intimidate, or interfere with any authorized officer
5 in the conduct of any search, investigation, or in-
6 spection described in paragraph (2);

7 (4) to resist a lawful arrest for any act prohib-
8 ited by this Act;

9 (5) to interfere with, delay, or prevent, by any
10 means, the apprehension, arrest, or detection of an-
11 other person, knowing that such person has com-
12 mitted any act prohibited by this section;

13 (6) to submit any false information pursuant to
14 any requirement under this Act or any regulation
15 promulgated under this Act;

16 (7) to forcibly assault, resist, oppose, impede,
17 intimidate, sexually harass, bribe, or interfere with
18 any observer or any data collector employed or
19 under contract to carry out responsibilities under
20 this Act or any Act administered by the Secretary;

21 (8) to import, export, transport, sell, receive,
22 acquire, or purchase in interstate or foreign com-
23 merce any fish or fish product taken, possessed,
24 transported, or sold in violation of any foreign law
25 or treaty addressing the conservation or manage-

1 ment of living marine resources, or any conservation
2 and management measures (as defined in section 3);
3 or

4 (9) to make or submit any incomplete, invalid,
5 or false record, account, or label for, or any false
6 identification of, any fish or fish product (including
7 false identification of the species, harvesting vessel
8 or nation, or the date or location where harvested)
9 that has been, or is intended to be imported, ex-
10 ported, transported, sold, offered for sale, purchased,
11 or received in interstate or foreign commerce except
12 where such making or submission is prohibited by
13 section 307(1)(I) of the Magnuson Fishery Con-
14 servation and Management Act (16 U.S.C.
15 1857(1)(I)).

16 **SEC. 10. ENFORCEMENT.**

17 (a) **RESPONSIBILITY.**—The Secretary and the Sec-
18 retary of the department in which the Coast Guard is op-
19 erating shall enforce the provisions of this Act. In enforce-
20 ing this Act, the Secretary and the Secretary of the de-
21 partment in which the Coast Guard is operating may uti-
22 lize, by agreement and on a reimbursable or nonreimburs-
23 able basis the personnel, services, equipment (including
24 aircraft and vessels), and facilities of any other Federal
25 agency (including all elements of the Department of De-

1 fense), or of any State agency. The Secretary and the Sec-
2 retary of the department in which the Coast Guard is op-
3 erating shall authorize officers to enforce the provisions
4 of this Act (including any regulation promulgated under
5 this Act). The head of any Federal or State agency that
6 has entered into an agreement with either the Secretary
7 or the Secretary of the department in which the Coast
8 Guard is operating under this section may (if the agree-
9 ment so provides) authorize officers to enforce the provi-
10 sions of this Act (including any regulation promulgated
11 under this Act).

12 (b) POWERS OF AUTHORIZED OFFICERS.—

13 (1) IN GENERAL.—An authorized officer under
14 subsection (a) may, with or without a warrant or
15 other process—

16 (A) arrest a person if the officer has prob-
17 able cause that the person has committed an
18 act prohibited under section 9;

19 (B) board and search or inspect any vessel
20 that is subject to this Act;

21 (C) seize any vessel (together with its fish-
22 ing gear, furniture, appurtenances, stores, and
23 cargo) used or employed in, or with respect to
24 which it reasonably appears that such vessel
25 was used or employed in, the violation of any

1 provision of this Act (including any regulation
2 promulgated under this Act);

3 (D) seize any fish (wherever found) im-
4 ported, exported, transported, sold, received, ac-
5 quired, or purchased in any manner, in connec-
6 tion with or as a result of the violation of any
7 provision of this Act;

8 (E) seize any other evidence related to any
9 violation of any provision of this Act (including
10 any regulation promulgated under this Act);

11 (F) search or inspect any facility or con-
12 veyance used or employed in, or which reason-
13 ably appears to be used or employed in, the
14 storage, processing, transport, or trade of fish
15 or fish products;

16 (G) inspect records pertaining to the stor-
17 age, processing, transport, or trade of fish or
18 fish products;

19 (H) detain, for a period not to exceed 14
20 days, any shipment of fish or fish products that
21 is related to any violation of any provision of
22 this Act (including any regulations promulgated
23 under this Act) and that was imported into,
24 landed on, introduced into, exported from, or
25 transported within the jurisdiction of the

1 United States, or, if such fish or fish product
2 is deemed to be perishable, sell and retain the
3 proceeds for a period not to exceed 14 days;

4 (I) search and seize, in accordance with
5 any guidelines issued by the Attorney General;

6 (J) execute and serve any subpoena, arrest
7 warrant, search warrant issued in accordance
8 with rule 41 of the Federal Rules of Criminal
9 Procedure, or other warrant or civil or criminal
10 process issued by any officer or court of com-
11 petent jurisdiction;

12 (K) access, directly or indirectly, for en-
13 forcement purposes any data or information re-
14 quired to be provided under this Act (including
15 any regulations promulgated under this Act),
16 including data from vessel monitoring systems,
17 automatic identification systems, long-range
18 identification and tracking systems, or any
19 similar system; and

20 (L) exercise any other lawful authority.

21 (2) FELONIES.—An authorized officer under
22 subsection (a) may carry, in accordance with any
23 guidelines issued by the Attorney General, firearms
24 and may make an arrest for any offense under the
25 laws of the United States committed in the officer's

1 presence or for the commission of any felony under
2 the laws of the United States if the officer has prob-
3 able cause that the person to be arrested has com-
4 mitted or is committing a felony.

5 (c) ISSUANCE OF CITATIONS.—If an authorized offi-
6 cer under subsection (a) finds that a person or vessel is
7 engaging or has been engaged in a violation of any provi-
8 sion of this Act, the officer may issue a citation to the
9 owner or operator of the vessel in lieu of proceeding under
10 subsection (f), (g), or (i). The Secretary shall maintain
11 a record of all citations issued under this subsection.

12 (d) SUBPOENAS.—

13 (1) IN GENERAL.—For the purposes of con-
14 ducting any investigation or hearing under this Act,
15 or any other Act administered by the Secretary, the
16 Secretary may—

17 (A) issue subpoenas for the attendance and
18 testimony of witnesses and the production of
19 relevant papers, photographs, records, books,
20 and documents in any form, including those in
21 electronic, optical, or magnetic form; and

22 (B) administer oaths.

23 (2) WITNESS FEES.—Witnesses summoned
24 shall be paid the same fees and mileage that are
25 paid to witnesses in the courts of the United States.

1 (3) CONTEMPT.—In case of contempt or refusal
2 to obey a subpoena served upon any person under
3 this subsection, the district court of the United
4 States for any district in which such person is
5 found, resides, or transacts business, upon applica-
6 tion by the United States and after notice to such
7 person, shall have jurisdiction to issue an order re-
8 quiring such person to appear and give testimony
9 before the Secretary or to appear and produce docu-
10 ments before the Secretary, or both, and any failure
11 to obey such order of the court may be punished by
12 such court as a contempt thereof.

13 (e) DISTRICT COURT JURISDICTION.—

14 (1) IN GENERAL.—The several district courts of
15 the United States shall have jurisdiction over any
16 actions arising under this section. For the purpose
17 of this section, for Hawaii or any possession of the
18 United States in the Pacific Ocean, the appropriate
19 court is the United States District Court for the
20 District of Hawaii, except—

21 (A) in the case of Guam and Wake Island,
22 the appropriate court is the United States Dis-
23 trict Court for the District of Guam; and

24 (B) in the case of the Northern Mariana
25 Islands, the appropriate court is the United

1 States District Court for the District of the
2 Northern Mariana Islands.

3 (2) EACH VIOLATION SEPARATE OFFENSE.—

4 Each violation shall be a separate offense. The of-
5 fense shall be deemed to have been committed not
6 only in the district where the violation first occurred,
7 but also in any other district as authorized by law.

8 (3) OFFENSES NOT COMMITTED IN ANY DIS-
9 TRICT.—Any offense not committed in any district is
10 subject to the venue provisions of section 3238 of
11 title 18, United States Code.

12 (f) CIVIL ENFORCEMENT.—

13 (1) CIVIL ADMINISTRATIVE PENALTIES.—

14 (A) IN GENERAL.—Any person who is
15 found by the Secretary (after notice and oppor-
16 tunity for a hearing in accordance with section
17 554 of title 5, United States Code) to have
18 committed an act prohibited under section 9
19 shall be liable to the United States for a civil
20 penalty. The amount of the civil penalty shall
21 not exceed \$250,000 for each violation. Each
22 day of a continuing violation shall constitute a
23 separate offense. The amount of such civil pen-
24 alty shall be assessed by the Secretary, by writ-
25 ten notice. In determining the amount of such

1 penalty, the Secretary shall take into account
2 the nature, circumstances, extent, and gravity
3 of the prohibited act committed and, with re-
4 spect to the violator, the degree of culpability,
5 any history of prior offenses, and other matters
6 as justice may require. In assessing such pen-
7 alty the Secretary may also consider any infor-
8 mation provided by the violator relating to the
9 ability of the violator to pay if the information
10 is served on the Secretary not later than 30
11 days prior to an administrative hearing.

12 (B) COMPROMISE OR OTHER ACTION BY
13 SECRETARY.—The Secretary may compromise,
14 modify, or remit, with or without conditions,
15 any civil administrative penalty which is or may
16 be imposed under this subsection and that has
17 not been referred to the Attorney General for
18 further enforcement action.

19 (2) CIVIL JUDICIAL PENALTIES.—Any person
20 who violates any provision of this Act (including any
21 regulation promulgated or permit issued thereunder)
22 shall be subject to a civil judicial penalty not to ex-
23 ceed \$300,000 for each such violation. Each day of
24 a continuing violation shall constitute a separate vio-
25 lation. The Attorney General, upon the request of

1 the Secretary, may commence a civil action in an ap-
2 propriate district court of the United States. The
3 district court shall have jurisdiction to award civil
4 penalties and such other relief as justice may re-
5 quire. In determining the amount of a civil penalty,
6 the district court shall take into account the nature,
7 circumstances, extent, and gravity of the prohibited
8 act committed and, with respect to the violator, the
9 degree of culpability, any history of prior violations,
10 and such other matters as justice may require. In
11 imposing such penalty, the district court may also
12 consider information related to the ability of the vio-
13 lator to pay.

14 (3) IN REM JURISDICTION.—A vessel (including
15 its fishing gear, furniture, appurtenances, stores,
16 and cargo) used in the commission of an act prohib-
17 ited by section 9 shall be liable in rem for any civil
18 penalty assessed for such violation under this section
19 and may be proceeded against in any district court
20 of the United States having jurisdiction thereof.
21 Such penalty shall constitute a maritime lien on
22 such vessel. The maritime lien on the vessel may be
23 recovered in an action in rem in the district court
24 of the United States having jurisdiction over the ves-
25 sel.

1 (4) COLLECTION OF ADMINISTRATIVE PEN-
2 ALTIES.—If a person fails to pay an assessment of
3 a civil penalty under paragraph (1) after it has be-
4 come a final and unappealable order, the Secretary
5 shall refer the matter to the Attorney General. The
6 Attorney General shall recover the amount assessed
7 (plus interest at current prevailing rates from the
8 date of the final order) in any appropriate district
9 court of the United States. In such action, the valid-
10 ity and appropriateness of the final order imposing
11 the civil penalty shall not be subject to review. Any
12 person who fails to pay, on a timely basis, the
13 amount of an assessment of a civil penalty shall be
14 required to pay (in addition to such amount and in-
15 terest, attorney’s fees, and costs for collection pro-
16 ceedings) a quarterly nonpayment penalty for each
17 quarter during which such failure to pay persists.
18 Such nonpayment penalty shall be in an amount
19 equal to 20 percent of the aggregate amount of such
20 person’s penalties and nonpayment penalties that
21 are unpaid as of the beginning of such quarter.

22 (g) FORFEITURE.—

23 (1) CRIMINAL FORFEITURE.—A person who is
24 convicted of an offense in violation of this Act shall
25 forfeit to the United States—

1 (A) any property, real or personal, consti-
2 tuting or traceable to the gross proceeds taken,
3 obtained, or retained, in connection with or as
4 a result of the offense, including, without limi-
5 tation, any fish (or the fair market value there-
6 of); and

7 (B) any property, real or personal, used or
8 intended to be used, in any manner, to commit
9 or facilitate the commission of the offense, in-
10 cluding, without limitation, any vessel (includ-
11 ing the vessel's equipment, stores, catch and
12 cargo), vehicle, aircraft, or other means of
13 transportation. Pursuant to section 2461(c) of
14 title 28, United States Code, the provisions of
15 section 413 of the Controlled Substances Act
16 (21 U.S.C. § 853) except for subsection (d) of
17 that Act shall apply to criminal forfeitures
18 under this section.

19 (2) CIVIL FORFEITURE.—The property set forth
20 below shall be subject to forfeiture to the United
21 States in accordance with the provisions of chapter
22 46 of title 18, United States Code, and no property
23 right shall exist in it:

24 (A) Any property, real or personal, consti-
25 tuting or traceable to the gross proceeds taken,

1 obtained, or retained in connection with, or as
2 a result of, a violation of this Act, including,
3 without limitation, any fish (or the fair market
4 value thereof).

5 (B) Any property, real or personal, used or
6 intended to be used, in any manner, to commit
7 or facilitate the commission of a violation of
8 this Act, including, without limitation, any ves-
9 sel (including the vessel's equipment, stores,
10 catch, and cargo), vehicle, aircraft, or other
11 means of transportation.

12 (3) APPLICATION OF THE CUSTOMS LAWS.—All
13 provisions of law relating to seizure, summary judg-
14 ment, and judicial forfeiture and condemnation for
15 violation of the customs laws, the disposition of the
16 property forfeited or condemned or the proceeds
17 from the sale thereof, the remission or mitigation of
18 such forfeitures, and the compromise of claims shall
19 apply to seizures and forfeitures incurred, or alleged
20 to have been incurred, under the provisions of this
21 Act, insofar as applicable and not inconsistent with
22 the provisions hereof. For seizures and forfeitures of
23 property under this section by the Secretary, such
24 duties as are imposed upon the customs officer or
25 any other person with respect to the seizure and for-

1 feiture of property under the customs law may be
2 performed by such officers as are designated by the
3 Secretary or, upon request of the Secretary, by any
4 other agency that has authority to manage and dis-
5 pose of seized property.

6 (4) PRESUMPTION.—For the purposes of this
7 section there is a rebuttable presumption that all
8 fish, or components thereof, found on board a vessel
9 that is used or seized in connection with a violation
10 of this Act (including any regulation promulgated
11 under this Act) were taken, obtained, or retained as
12 a result of IUU fishing or fishing-related activities
13 in support of IUU fishing.

14 (h) CRIMINAL ENFORCEMENT.—

15 (1) Any person (other than a foreign govern-
16 ment agency, or entity wholly owned and controlled
17 by a foreign government) who knowingly commits
18 any act prohibited by section 9 of this Act shall be
19 imprisoned for not more than 5 years or fined not
20 more than \$500,000 for individuals or \$1,000,000
21 for an organization, or both; except that if in the
22 commission of any such offense the individual uses
23 a dangerous weapon, engages in conduct that causes
24 bodily injury to any officer authorized to enforce the
25 provisions of this Act, or places any such officer in

1 fear of imminent bodily injury, the maximum term
2 of imprisonment is not more than 10 years.

3 (2) Any person (other than a foreign govern-
4 ment agency, or entity wholly owned and controlled
5 by a foreign government) who violates paragraph
6 (2), (3), (4), (5) or (6) of section 9, and who, in the
7 exercise of due care should know that such person's
8 conduct violates such subsections, shall be fined
9 under title 18, United States Code, or imprisoned
10 not more than 1 year, or both.

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

19 **SEC. 11. INTERNATIONAL COOPERATION AND ASSISTANCE.**

20 (a) IN GENERAL.—To the greatest extent possible,
21 consistent with existing authority and the availability of
22 funds, the Secretary shall provide appropriate assistance,
23 including grants, to developing nations and international
24 organizations of which such nations are members to assist

1 those nations in meeting their obligations under the
2 Agreement.

3 (b) USE OF RESOURCES.—In carrying out subsection
4 (a), the Secretary may, by agreement, on a reimbursable
5 or nonreimbursable basis, utilize the personnel, services,
6 equipment, and facilities of any individual, corporation,
7 partnership, association, or other entity, and any Federal,
8 State, local, or foreign government or any entity of any
9 such government.

10 (c) TRANSFER OF FUNDS.—The Secretary is author-
11 ized to transfer funds, subject to the limits of available
12 appropriations, to any foreign government and any inter-
13 national, non-governmental, or intergovernmental organi-
14 zation for purposes related to carrying out the inter-
15 national responsibilities of subsection (a) or any statute
16 administered by the Secretary.

17 **SEC. 12. RELATIONSHIP TO OTHER LAWS.**

18 (a) STATUTORY CONSTRUCTION.—Nothing in this
19 Act shall be construed to displace any requirements im-
20 posed by the customs laws of the United States or any
21 other laws or regulations enforced or administered by the
22 Secretary of Homeland Security. Where more stringent re-
23 quirements regarding port entry or access to port services
24 exist under other Federal law, the more stringent require-
25 ments shall apply. Nothing in this Act shall affect a ves-

1 sel's entry into port, in accordance with international law,
2 for reasons of force majeure or distress.

3 (b) STATUTORY INTERPRETATION.—This Act shall
4 be interpreted and applied in accordance with United
5 States obligations under international law.

6 **SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

7 There is authorized to be appropriated to the Sec-
8 retary such sums as are necessary for each of fiscal years
9 2012 through 2016 to carry out the provisions of this Act.

Calendar No. 549

112TH CONGRESS
2^D SESSION

S. 1980

A BILL

To prevent, deter, and eliminate illegal, unreported, and unregulated fishing through port State measures.

NOVEMBER 14, 2012

Reported without amendment