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APPROVED

AUG - 5 1975



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

JUL 31 1975

*Posted  
8/6/75  
To Archives  
8/6/75*

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 5522 - Atlantic Tunas Convention Act of 1975  
Sponsor - Rep. Leggett (D) California

Last Day for Action

August 6, 1975 - Wednesday

Purpose

Provides implementing authority for the United States to carry out its responsibilities under the International Convention for the Conservation of Atlantic Tunas.

Agency Recommendations

Office of Management and Budget	Approval
Department of State	Approval
Department of Commerce	Approval
Civil Service Commission	Approval
Department of Transportation	No objection
Department of the Treasury	No objection
Department of Justice	No objection
Office of the Special Representative for Trade Negotiations	No objection
General Services Administration	No objection

Discussion

The International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro on May 14, 1966,



entered into force on March 21, 1969, after being ratified, or adhered to, by seven countries, including the United States. Thirteen countries in addition to the United States are currently parties to the Convention including Canada, France, Japan, Korea, Brazil, Cuba, Ghana, Ivory Coast, Morocco, Portugal, Senegal, South Africa and Spain.

The Convention was a response to the rapidly increasing exploitation of Atlantic Ocean tuna resources by fishermen from a large number of nations of Europe, Africa, the Americas and Asia. It provides for a program of international cooperation in research and conservation of these important fishery resources. The International Commission for Conservation of the Atlantic Tunas, which was established by the Convention and consists of delegates from each country party to the Convention, is responsible for coordinating, and if necessary conducting, scientific research on the Atlantic tunas and for recommending joint measures to maintain the tuna populations at levels which will permit the maximum sustainable catch.

Although the United States has ratified the Convention, statutory authority is required in order for the United States to implement its provisions. H.R. 5522 would provide such authority, thus enabling the United States to carry out its international responsibilities pursuant to its ratification of the Convention.

The enrolled bill is substantially similar to draft legislation proposed to the Congress earlier this year by the Department of State and is also similar to existing statutes, such as the Northwest Atlantic Fisheries Act of 1950 and the Tuna Conventions Act of 1950, implementing other fishery agreements to which the United States is a party. Major provisions of the bill would:

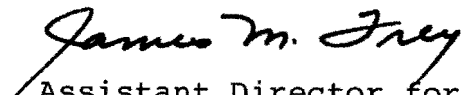
- Authorize the President to appoint up to three Commissioners (the maximum number allowed by the Convention) to serve as U.S. delegates to the Commission;

- Authorize the U.S. Commissioners to appoint an advisory committee of from 5 to 20 members to be selected from the various groups concerned with the fisheries covered by the Convention;
- Authorize the United States to enter into international agreements with other countries parties to the Convention relating to mutual enforcement procedures;
- Authorize and direct the Secretary of Commerce to administer and enforce the provisions of the Convention, this Act and regulations issued thereunder and to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Act; however, actual enforcement "at sea" would be primarily the responsibility of the Secretary of the department in which the Coast Guard is operating (i.e., Secretary of Transportation) in cooperation with the Secretary of Commerce and the United States Customs Service;
- Permit the Secretary of Commerce, under certain conditions, to use the personnel of other Federal or State agencies for enforcement purposes;
- Require promulgation of regulations to prohibit imports of certain fish, subject to regulation under the Convention, which are taken in a manner tending to diminish the effectiveness of the Commission's conservation recommendations;
- Provide for the assessment of civil penalties for violations of the Act and regulations issued thereunder;
- Provide for cooperation of Federal agencies with scientific and other programs of the Commission; and,
- Authorize "such sums as may be necessary" to carry out the Act in fiscal years 1976, 1977 and the transition quarter.



While there are a number of differences between the enrolled bill and the Administration's proposal, we believe only one deserves particular mention. Under H.R. 5522, the Secretary of Commerce, after consulting with the Secretary of the department in which the Coast Guard is operating, would be responsible for adopting regulations to provide for procedures and methods of enforcement pursuant to the Convention even though actual enforcement activities "at sea" under the Act would be primarily the responsibility of the Secretary of the department in which the Coast Guard is operating. The Administration's proposal would have given primary responsibility both for enforcement "at sea" and for promulgation of regulations relating to such enforcement to the Secretary of the department in which the Coast Guard is operating in consultation with the Secretary of Commerce.

Noting this difference, the Department of Transportation, in its enrolled bill letter, states its preference for the Administration's proposal because "it placed the responsibility for drafting regulations with the department primarily responsible for their at-sea enforcement." We share the Transportation Department's view, but, like that Department, do not believe this difference warrants disapproval of the bill.

  
Assistant Director for  
Legislative Reference

Enclosures

**Department of Justice**  
**Washington, D.C. 20530**

**JUL 29 1975**

Honorable James T. Lynn  
Director  
Office of Management  
and Budget  
Washington, D. C. 20503

Dear Mr. Lynn:

In compliance with your request I have examined a facsimile of the enrolled bill (H.R. 5522), "To give effect to the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro May 14, 1966, by the United States of America and other countries, and for other purposes."

H.R. 5522 would implement and give effect to the International Convention for the Conservation of Atlantic Tunas. It would authorize the appointment of Commissioners and an advisory board to represent the United States Government on the International Commission for the Conservation of the Atlantic Tuna.

In addition, it would authorize the Secretary of Commerce to administer and enforce the provisions of the Convention and this Act and to adopt and promulgate such regulations as are necessary in carrying out the purposes and objectives of the Convention and the Act.

Furthermore, the bill provides for penalties for violation of the Convention as well as law enforcement powers toward that end.



Noting the fact that certain of the Department's recommendations for amending the bill were not adopted, the Department interposes no objection to Executive approval of this measure.

Sincerely,

A handwritten signature in cursive script that reads "Michael M. Uhlmann". The signature is written in dark ink and has a long, horizontal flourish extending to the right.


Michael M. Uhlmann  
Assistant Attorney General

OFFICE OF THE SPECIAL REPRESENTATIVE  
FOR TRADE NEGOTIATIONS

EXECUTIVE OFFICE OF THE PRESIDENT  
WASHINGTON  
20506

July 25, 1975

MEMORANDUM TO: James M. Frey  
Assistant Director for  
Legislative Reference  
OMB

FROM: John D. Greenwald   
Assistant General Counsel  
STR

SUBJECT: H.R. 5522

This Office has reviewed enrolled bill H.R. 5522, the Atlantic Tunas Convention Act of 1975, and has no objections on trade policy grounds to its enactment. We note that Section 6(c)(4) of the enrolled bill requires regulations prohibiting the importation into the United States of certain fish, subject to regulation under the Convention, which are taken in a manner which undermines the effectiveness of the Convention. While we believe the President should be given the flexibility to fashion the regulations he determines necessary or appropriate, we note that the required import restrictions are narrowly drawn and believe they are not inconsistent with United States trade obligations.



UNITED STATES OF AMERICA  
GENERAL SERVICES ADMINISTRATION  
WASHINGTON, DC 20405



JUL 25 1975

Honorable James T. Lynn  
Director, Office of  
Management and Budget  
Washington, DC 20503

Dear Mr. Lynn:

By referral dated July 24, 1975, from the Assistant Director for Legislative Reference, your office requested the views of the General Services Administration on enrolled bill H.R. 5522, "To give effect to the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro May 14, 1966, by the United States of America and other countries, and for other purposes."

GSA has no objection to Presidential approval of this enrolled bill.

Sincerely,

A large, stylized handwritten signature in black ink, which appears to read "Sampson".

Arthur F. Sampson  
Administrator



THE GENERAL COUNSEL OF THE TREASURY  
WASHINGTON, D.C. 20220

JUL 30 1975

Director, Office of Management and Budget  
Executive Office of the President  
Washington, D.C. 20503

Attention: Assistant Director for Legislative  
Reference

Sir:

Reference is made to your request for the views of this Department on the enrolled enactment of H.R. 5522, the "Atlantic Tunas Convention Act of 1975."

The purpose of the enrolled enactment is to give effect to the International Convention for the Conservation of Atlantic Tunas, which was signed by the United States in 1966 and ratified by the Senate in 1969. The enrolled bill would ensure United States compliance with regulations contained in the Convention as well as give effect to articles providing for international enforcement.


Section 6(a) of the enrolled bill, in part, would authorize the Secretary of Commerce to administer and enforce the Convention and the Act and to utilize personnel or facilities of other Federal agencies to aid in enforcement at sea. Section 6(b) would make enforcement at sea for fishing vessels which are subject to the jurisdiction of the United States primarily the responsibility of the Secretary of the Department in which the Coast Guard is operating, in cooperation with the Secretary of Commerce and the United States Customs Service.

The enrolled enactment appears to be consistent with the existing United States policy, as presented in the United Nations Conference on the Law of the Sea, to support an international or regional approach to regulation and conservation of highly migratory species of fish, such as tuna. The United States may ultimately sign a Law of the Sea Treaty that would extend national jurisdiction over living and non-living marine resources from the current 12 mile distance from the coast which is included in the definition of "fisheries zone" in section 2(4) of the enrolled bill out to 200 miles or some other distance.

Trends at the Conference have been pointing in this direction. While it is true that a self-executing international treaty ratified by the United States takes precedence over existing legislation in a given area, it has been customary to state specifically that the Law of the Sea Treaty is to take precedence. Consequently, this issue should be taken into consideration, particularly in regard to the definition of "fisheries zone" in section 2(4) of the enrolled bill.

This Department would have no objection to a recommendation that the enrolled enactment of H.R. 5522 be approved by the President.

Sincerely yours,



Richard R. Albrecht

General Counsel

Richard R. Albrecht

**APPROVED**  
AUG -5 1975

THE WHITE HOUSE  
WASHINGTON  
August 3, 1975

ACTION  
Last Day: August 6

MEMORANDUM FOR THE PRESIDENT  
FROM: JIM CANNON *Jac*  
SUBJECT: H.R. 5522 - Atlantic Tunas Convention  
Act of 1975

Attached for your consideration is H.R. 5522, sponsored by Representative Leggett, which provides implementing authority for the United States to carry out its responsibilities under the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro on May 14, 1966.

A discussion of the provisions of the bill is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, NSC, Counsel's Office (Lazarus) and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign H.R. 5522 at Tab B.

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

JUL 31 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 5522 - Atlantic Tunas Convention Act of 1975  
Sponsor - Rep. Leggett (D) California

Last Day for Action

August 6, 1975 - Wednesday

Purpose

Provides implementing authority for the United States to carry out its responsibilities under the International Convention for the Conservation of Atlantic Tunas.

Agency Recommendations

Office of Management and Budget	Approval
Department of State	Approval
Department of Commerce	Approval
Civil Service Commission	Approval
Department of Transportation	No objection
Department of the Treasury	No objection
Department of Justice	No objection
Office of the Special Representative for Trade Negotiations	No objection
General Services Administration	No objection

Discussion

The International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro on May 14, 1966,

entered into force on March 21, 1969, after being ratified, or adhered to, by seven countries, including the United States. Thirteen countries in addition to the United States are currently parties to the Convention including Canada, France, Japan, Korea, Brazil, Cuba, Ghana, Ivory Coast, Morocco, Portugal, Senegal, South Africa and Spain.

The Convention was a response to the rapidly increasing exploitation of Atlantic Ocean tuna resources by fishermen from a large number of nations of Europe, Africa, the Americas and Asia. It provides for a program of international cooperation in research and conservation of these important fishery resources. The International Commission for Conservation of the Atlantic Tunas, which was established by the Convention and consists of delegates from each country party to the Convention, is responsible for coordinating, and if necessary conducting, scientific research on the Atlantic tunas and for recommending joint measures to maintain the tuna populations at levels which will permit the maximum sustainable catch.

Although the United States has ratified the Convention, statutory authority is required in order for the United States to implement its provisions. H.R. 5522 would provide such authority, thus enabling the United States to carry out its international responsibilities pursuant to its ratification of the Convention.

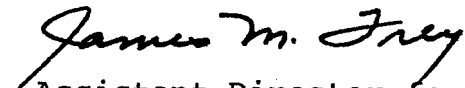
The enrolled bill is substantially similar to draft legislation proposed to the Congress earlier this year by the Department of State and is also similar to existing statutes, such as the Northwest Atlantic Fisheries Act of 1950 and the Tuna Conventions Act of 1950, implementing other fishery agreements to which the United States is a party. Major provisions of the bill would:

- Authorize the President to appoint up to three Commissioners (the maximum number allowed by the Convention) to serve as U.S. delegates to the Commission;

- Authorize the U.S. Commissioners to appoint an advisory committee of from 5 to 20 members to be selected from the various groups concerned with the fisheries covered by the Convention;
- Authorize the United States to enter into international agreements with other countries parties to the Convention relating to mutual enforcement procedures;
- Authorize and direct the Secretary of Commerce to administer and enforce the provisions of the Convention, this Act and regulations issued thereunder and to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Act; however, actual enforcement "at sea" would be primarily the responsibility of the Secretary of the department in which the Coast Guard is operating (i.e., Secretary of Transportation) in cooperation with the Secretary of Commerce and the United States Customs Service;
- Permit the Secretary of Commerce, under certain conditions, to use the personnel of other Federal or State agencies for enforcement purposes;
- Require promulgation of regulations to prohibit imports of certain fish, subject to regulation under the Convention, which are taken in a manner tending to diminish the effectiveness of the Commission's conservation recommendations;
- Provide for the assessment of civil penalties for violations of the Act and regulations issued thereunder;
- Provide for cooperation of Federal agencies with scientific and other programs of the Commission; and,
- Authorize "such sums as may be necessary" to carry out the Act in fiscal years 1976, 1977 and the transition quarter.

While there are a number of differences between the enrolled bill and the Administration's proposal, we believe only one deserves particular mention. Under H.R. 5522, the Secretary of Commerce, after consulting with the Secretary of the department in which the Coast Guard is operating, would be responsible for adopting regulations to provide for procedures and methods of enforcement pursuant to the Convention even though actual enforcement activities "at sea" under the Act would be primarily the responsibility of the Secretary of the department in which the Coast Guard is operating. The Administration's proposal would have given primary responsibility both for enforcement "at sea" and for promulgation of regulations relating to such enforcement to the Secretary of the department in which the Coast Guard is operating in consultation with the Secretary of Commerce.

Noting this difference, the Department of Transportation, in its enrolled bill letter, states its preference for the Administration's proposal because "it placed the responsibility for drafting regulations with the department primarily responsible for their at-sea enforcement." We share the Transportation Department's view, but, like that Department, do not believe this difference warrants disapproval of the bill.

  
Assistant Director for  
Legislative Reference

Enclosures



THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: July 31

Time: 630pm

FOR ACTION: Paul Leach *ML*  
Max Friedersdorf *ML*  
Ken Lazarus *ML*  
NSC/S *ML*  
Mike Duval *ML*

cc (for information): Jim Cavanaugh  
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: August 1k

Time: noon

SUBJECT:

H.R. 5522 - Atlantic Tunas Convention Act of 1975

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.  
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: July 31

Time: 630pm

FOR ACTION: Paul Leach  
Max Friedersdorf  
Ken Lazarus  
NSC/S  
Mike Duval

cc (for information): Jim Cavanaugh  
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: August 1

Time: noon

SUBJECT:

H.R. 5522 - Atlantic Tunas Convention Act of 1975

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

*OK - Called Judy Johnston*

*8-1-75*

*PEL →*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James H. Cavanaugh

811

THE WHITE HOUSE  
WASHINGTON

August 1, 1975

MEMORANDUM FOR: JIM CAVANAUGH  
FROM: MAX L. FRIEDERSDORF *MF*  
SUBJECT: H.R. 5522 - Atlantic Tunas Convention Act of 1975

The Office of Legislative Affairs concurs with the agencies  
that the subject bill be signed.

Attachments

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: July 31

Time: 630pm

FOR ACTION: Paul Leach  
Max Friedersdorf  
Ken Lazarus  
NSC/S  
Mike Duval

cc (for information): Jim Cavanaugh  
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date:

August 1

Time:

noon

SUBJECT:

H.R. 5522 - Atlantic Tunas Convention Act of 1975

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

No objection. -- Ken Lazarus 8/1/75


PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James H. Cavanaugh

NATIONAL SECURITY COUNCIL

August 1, 1975

MEMORANDUM FOR: JAMES CAVANAUGH  
FROM: Jeanne W. Davis   
SUBJECT: H. R. 5522 - Atlantic Tunas  
Convention Act of 1975

The NSC Staff concurs in the proposed Enrolled Bill H. R. 5522 - Atlantic Tunas Convention Act of 1975.



DEPARTMENT OF STATE

Washington, D.C. 20520

**JUL 28 1975**

AUG 2 1975

Honorable James T. Lynn  
Director  
Office of Management and Budget

Dear Mr. Lynn:

With reference to Mr. Frey's communication of July 24, asking for this Department's views regarding the enrolled bill H. R. 5522, to give effect to the International Convention for the Conservation of Atlantic Tunas, we wish to report that we recommend that the bill be approved by the President as soon as practicable.

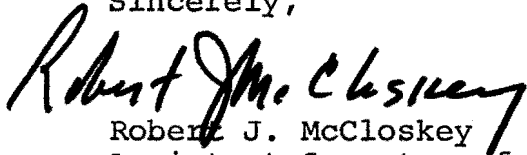
The enrolled bill provides the specific legislative authority needed for discharge of the treaty obligations of the United States in regards to the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro, May 14, 1966 and which entered into force March 21, 1969. The bill provides authorization for appointment of Commissioners to represent the United States on the Commission created under the Convention, provides authority for the Commissioners to appoint an advisory committee, provides for receipt and acceptance or objection to conservation recommendations made by the Commission under the Convention, provides for the promulgation and enforcement of such regulations as may be necessary to ensure compliance by U.S. fishermen with the duly accepted conservation measures recommended by the Commission and provides for cooperation in carrying out the scientific and other programs of the Commission.

Many of these provisions are substantially similar to like provisions in other statutes implementing fishery agreements, such as the Northwest Atlantic Fisheries Act of 1950, as amended, and the Tuna Convention Act of 1950, as amended.

An estimate of the costs which would be incurred under the bill and their relation to the President's budget

has previously been provided to the Office of Management and Budget by the Department of Commerce.

Sincerely,

A handwritten signature in black ink that reads "Robert J. McCloskey". The signature is written in a cursive style with a large initial "R" and a long, sweeping underline.

Robert J. McCloskey  
Assistant Secretary for  
Congressional Relations

JUL 25 1975



GENERAL COUNSEL OF THE  
DEPARTMENT OF COMMERCE  
Washington, D.C. 20230

Honorable James T. Lynn  
Director, Office of Management  
and Budget  
Washington, D. C. 20503

Attention: Assistant Director for Legislative Reference

Dear Mr. Lynn:

This is in reply to your request for the views of this Department concerning H. R. 5522, an enrolled enactment

"To give effect to the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro May 14, 1966, by the United States of America and other countries, and for other purposes."

The enrolled enactment would provide the necessary authority for the United States to carry out its responsibilities under the International Convention for the Conservation of Atlantic Tunas. The enrolled enactment is substantially in accordance with the draft legislation submitted to the Congress by the Department of State on May 14, 1975.

The Department of Commerce urges approval by the President of H. R. 5522.

We estimate that to carry out our enforcement, research, and international negotiation functions under H. R. 5522 will require the expenditure of approximately \$600,000 per year.

Sincerely,

*Karl E. Bakke*

General Counsel







UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

CHAIRMAN

July 30, 1975

Honorable James T. Lynn  
Director, Office of Management and Budget  
Washington, D.C. 20503

Attention: Assistant Director for  
Legislative Reference

Dear Mr. Lynn:

This is in response to your request for the Commission's views on enrolled H.R. 5522.

We have reviewed this bill in terms of the personnel provisions it proposes and have no objection to them.

We recommend that the President sign the bill into law.

By direction of the Commission:

Sincerely yours,

*Robert Hampton*  
Chairman



OFFICE OF THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

JUL 25 1975

Honorable James T. Lynn  
Director  
Office of Management and Budget  
Washington, D.C. 20503

Dear Mr. Lynn:

Reference is made to your request for the views of the Department of Transportation concerning H.R. 5522, an enrolled bill

"To give effect to the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro May 14, 1966, by the United States of America and other countries, and for other purposes."

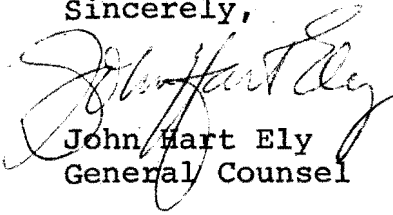
The Department of Transportation supports the implementation of the 1966 Convention. The enrolled bill differs slightly from a similar legislative proposal submitted by the Executive Branch, and one of those differences directly impacts on this Department.

Section 6(b) of the enrolled bill authorizes and directs the Secretary of Commerce, after consultation with the Secretary of the department in which the Coast Guard is operating, to adopt regulations for the enforcement of article IX of the convention. The Administration's proposal had granted that authority primarily to the Secretary of the department in which the Coast Guard is operating. The latter language was preferable to us, as it placed the responsibility for drafting regulations with the department primarily responsible for their at-sea enforcement.

We also note, in both the enrolled bill and in the Administration's proposal, that only civil penalties are provided for violations of the Act, including the obstruction of boarding officers. We have previously expressed the view that criminal sanctions should be imposed on those who obstruct boarding officers, and we foresee a continuing problem in this area of enforcement.

However, in view of the overall benefits of the enrolled bill, we have no objection to the President signing H.R. 5522.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Hart Ely".

John Hart Ely  
General Counsel

## ATLANTIC TUNAS CONVENTION ACT OF 1975

JUNE 14, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mrs. SULLIVAN, from the Committee on Merchant Marine and Fisheries, submitted the following

### REPORT

[To accompany H.R. 5522]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 5522) to give effect to the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro, May 14, 1966, by the United States of America and other countries, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Atlantic Tunas Convention Act of 1975".

#### DEFINITIONS

SEC. 2. For the purpose of this Act

(1) The term "Convention" means the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro May 14, 1966, including any amendments or protocols which are or become effective for the United States.

(2) The term "Commission" means the International Commission for the Conservation of Atlantic Tunas provided for in article III of the Convention.

(3) The term "Council" means the Council established within the International Commission for the Conservation of Atlantic Tunas pursuant to article V of the Convention.

(4) The term "fisheries zone" means the entire zone established by the United States under the Act of October 14, 1966 (80 Stat. 908; 16 U.S.C. 1091-1094), or similar zones established by other parties to the Convention to the extent that such zones are recognized by the United States.

(5) The term "fishing" means the catching, taking, or fishing for, or the attempted catching, taking, or fishing for any species of fish covered by the Convention, or any activities in support thereof.

(6) The term "fishing vessel" means any vessel engaged in catching fish or processing or transporting fish loaded on the high seas, or any vessel outfitted for such activities.

(7) The term "Panel" means any panel established by the Commission pursuant to article VI of the Convention.

(8) The term "person" means every individual, partnership, corporation, and association subject to the jurisdiction of the United States.

(9) The term "Secretary" means the Secretary of Commerce.

#### COMMISSIONERS

SEC. 3. (a) The United States shall be represented by not more than three United States Commissioners who shall serve as the United States delegates on the Commission, and who may serve on the Council and Panels of the Commission as provided for in the Convention. Such Commissioners shall be appointed by the President, serve as such during his pleasure, and receive no compensation for their services as such Commissioners.

(b) The Secretary of State, in consultation with the Secretary, may designate from time to time and for such periods as he may determine to be appropriate, Alternate United States Commissioners to the Commission. Any Alternate United States Commissioner may exercise at any meeting of the Commission, Council, any Panel, or the Advisory committee established pursuant to section 4 of this Act, all powers and duties of a United States Commissioner in the absence of a Commissioner appointed pursuant to subsection (a) of this section for whatever reason. The number of Alternate United States Commissioners which may be designated to attend any such meeting shall be limited to the number of United States Commissioners appointed pursuant to subsection (a) of this section that will not be present.

One of the United States Commissioners shall be an official of the Department of Commerce and each of the other United States Commissioners shall be an individual residing in a coastal State or the Commonwealth of Puerto Rico and shall be knowledgeable in the principles of commercial tuna fishing or sport tuna fishing, or both, and neither of such other Commissioners shall be a salaried employee of any State or political subdivision thereof the Commonwealth of Puerto Rico, or the Federal Government.

#### ADVISORY COMMITTEE

SEC. 4. The United States Commissioners shall appoint an advisory committee which shall be composed of not less than five nor more than twenty individuals who shall be selected from the various groups concerned with the fisheries covered by the Convention. Each member of the advisory committee shall serve for a term of two years and be eligible for reappointment. Members of the advisory committee may attend all public meetings of the Commission Council, or any Panel and any other meetings to which they are invited by the Commission, Council, or any Panel. The advisory committee shall be invited to attend all nonexecutive meetings of the United States Commissioners and at such meetings shall be given opportunity to examine and to be heard on all proposed programs of investigation, reports, recommendations, and regulations of the Commission. Members of the advisory committee shall receive no compensation for their services as such members. On approval by the United States Commissioners—

(1) if not more than three members of the advisory committee are designated by the committee to attend any meeting of the Commission, Council, or advisory committee, or of any Panel, each of such members shall be paid for his actual transportation expenses and per diem incident to his attendance; and

(2) in any case in which more than three members are designated by the advisory committee to attend any such meeting, each such member to whom paragraph (1) does not apply may be paid for his actual transportation expenses and per diem incident to his attendance.

#### SECRETARY OF STATE TO ACT FOR THE UNITED STATES

SEC. 5. (a) The Secretary of State is authorized to receive on behalf of the United States, reports, requests, and other communications of the Commission, and to act thereon directly or by reference to the appropriate authorities. The Secretary of State, with the concurrence of the Secretary and, for matters relating to enforcement, the Secretary of the department in which the Coast Guard is operating, is authorized to take appropriate action on behalf of the

United States with regard to recommendations received from the Commission pursuant to article VIII of the Convention. The Secretary and, when appropriate, the Secretary of the department in which the Coast Guard is operating, shall inform the Secretary of State as to what action he considers appropriate within five months of the date of the notification of the recommendation from the Commission, and again within forty-five days of the additional sixty-day period provided by the Convention if any objection is presented by another contracting party to the Convention, or within thirty days of the date of the notification of an objection made within the additional sixty-day period, whichever date shall be the later. After any notification from the Commission that an objection of the United States is to be considered as having no effect, the Secretary shall inform the Secretary of State as to what action he considers appropriate within forty-five days of the sixty-day period provided by the Convention for reaffirming objections. The Secretary of State shall take steps under the Convention to insure that a recommendation pursuant to article VIII of the Convention does not become effective for the United States prior to its becoming effective for all contracting parties conducting fisheries affected by such recommendation on a meaningful scale in terms of their effect upon the success of the conservation program, unless he determines, with the concurrence of the Secretary, and, for matters relating to enforcement, the Secretary of the department in which the Coast Guard is operating, that the purposes of the Convention would be served by allowing a recommendation to take effect for the United States at some earlier time.

(b) The Secretary of State, in consultation with the Secretary and the Secretary of the department in which the Coast Guard is operating, is authorized to enter into agreements with any contracting party, pursuant to paragraph 3 of article IX of the Convention, relating to cooperative enforcement of the provisions of the Convention, recommendations in force for the United States and such party or parties under the Convention, and regulations adopted by the United States and such contracting party or parties pursuant to recommendations of the Commission. Such agreements may authorize personnel of the United States to enforce measures under the Convention and under regulations of another party with respect to persons under that party's jurisdiction, and may authorize personnel of another party to enforce measures under the Convention and under United States regulations with respect to persons subject to the jurisdiction of the United States. Enforcement under such an agreement may not take place within the territorial seas or fisheries zone of the United States. Such agreements shall not subject persons or vessels under the jurisdiction of the United States to prosecution or assessment of penalties by any court or tribunal of a foreign country.

#### ADMINISTRATION

SEC. 6. (a) The Secretary is authorized and directed to administer and enforce all of the provisions of the Convention, this Act, and regulations issued pursuant thereto, except to the extent otherwise provided for in this Act. In carrying out such functions the Secretary is authorized and directed to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and this Act, and with the concurrence of the Secretary of State, he may cooperate with the duly authorized officials of the government of any party to the Convention. In addition, the Secretary may utilize, with the concurrence of the Secretary of the department in which the Coast Guard is operating insofar as such utilization involves enforcement at sea, with or without reimbursement and by agreement with any other Federal department or agency or with any agency of any State or the Commonwealth of Puerto Rico, the personnel, services, and facilities of that agency for enforcement purposes with respect to any vessel in the fisheries zone, or wherever found, with respect to any vessel documented under the laws of the United States, and any vessel numbered or otherwise licensed under the laws of any State or of the Commonwealth of Puerto Rico. When so utilized, such personnel of the States of the United States and of the Commonwealth of Puerto Rico are authorized to function as Federal law enforcement agents for these purposes, but they shall not be held and considered as employees of the United States for the purposes of any laws administered by the Civil Service Commission.

(b) Enforcement activities at sea under the provisions of this Act for fishing vessels subject to the jurisdiction of the United States shall be primarily the responsibility of the Secretary of the department in which the Coast Guard's

is operating, in cooperation with the Secretary and the United States Customs Service. The Secretary after consultation with the Secretary of the department in which the Coast Guard is operating, shall adopt such regulations as may be necessary to provide for procedures and methods of enforcement pursuant to article IX of the Convention.

(c) (1) Upon favorable action by the Secretary of State under section 5(a) of this Act on any recommendation of the Commission made pursuant to article VIII of the Convention, the Secretary shall promulgate, pursuant to this subsection, such regulations as may be necessary and appropriate to carry out such recommendation.

(2) To promulgate regulations referred to in paragraph (1) of this subsection, the Secretary shall publish in the Federal Register a general notice of proposed rulemaking and shall afford interested persons an opportunity to participate in the rulemaking through (A) submission of written data, views, or arguments, and (B) oral presentation at a public hearing. Such regulations shall be published in the Federal Register and shall be accompanied by a statement of the considerations involved in the issuance of the regulations, and by a statement, based on inquiries and investigations, assessing the nature and effectiveness of the measures for the implementation of the Commission's recommendations which are being or will be carried out by countries whose vessels engage in fishing the species subject to such recommendations within the waters to which the Convention applies. After publication in the Federal Register, such regulations shall be applicable to all vessels and persons subject to the jurisdiction of the United States on such date as the Secretary shall prescribe. The Secretary shall suspend at any time the application of any such regulation when, after consultation with the Secretary of State and the United States Commissioners, he determines that fishing operations in the Convention area of a contracting party for whom the regulations are effective are such as to constitute a serious threat to the achievement of the Commission's recommendations.

(3) The regulations required to be promulgated under paragraph (1) of this subsection may—

(A) select for regulation of one or more of the species covered by the Convention;

(B) divide the Convention waters into areas;

(C) establish one or more open or closed seasons as to each such area;

(D) limit the size of the fish and quantity of catch which may be taken from each area within any season during which fishing is allowed;

(E) limit or prohibit the incidental catch of a regulated species which may be retained, taken, possessed, or landed by vessels or persons fishing for other species of fish;

(F) require records of operations to be kept by any master or other person in charge of any fishing vessel;

(G) require such clearance certificates for vessels as may be necessary to carry out the purposes of the Convention and this Act;

(H) require proof satisfactory to the Secretary that any fish subject to regulation pursuant to a recommendation of the Commission offered for entry into the United States has not been taken or retained contrary to the recommendations of the Commission made pursuant to article VIII of the Convention which have been adopted as regulations pursuant to this section; and

(I) impose such other requirements and provide for such other measures as the Secretary may deem necessary to implement any recommendation of the Commission.

(4) Upon promulgation of regulations provided for in paragraph (3) of this subsection, the Secretary shall promulgate, with the concurrence of the Secretary of State and pursuant to the procedures prescribed in paragraph (2) of this subsection, additional regulations which shall become effective simultaneously with the application of the regulations provided for in paragraph (3) of this subsection, which prohibit—

(A) the entry into the United States of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the Convention area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission; and

(B) the entry into the United States, from any country when the vessels of such country are being used in the conduct of fishing operations in the Convention area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the Convention area.

(5) In the case of repeated and flagrant fishing operations in the Convention area by the vessels of any country which seriously threaten the achievement of the objectives of the Commission's recommendations, the Secretary with the concurrence of the Secretary of State, may by regulations promulgated pursuant to paragraph (2) of this subsection prohibit the entry in any form, from such country of other species covered by the Conventions as may be under investigation by the Commission and which were taken in the Convention area. Any such prohibition shall continue until the Secretary of Commerce is satisfied that the condition warranting the prohibition no longer exists, except that all fish in any form of the species under regulation which were previously prohibited from entry shall continue to be prohibited from entry.

(d) (1) Notwithstanding section 5(a) and subsection (c) of this section, the recommendations of the Commission concerning bluefin tuna (*Thunnus thynnus*) which were proposed at the third regular meeting of the Council during the period beginning November 20 and ending November 26, 1974, shall apply with respect to persons and vessels subject to the jurisdiction of the United States immediately upon the taking effect of the regulations required to be promulgated under paragraph (2) of this subsection.

(2) Not later than the thirtieth day after the date of enactment of this Act, the Secretary shall promulgate such regulations as may be necessary and appropriate to carry out the purposes of paragraph (1) of this subsection, including, after consultation with the Secretary of the department in which the Coast Guard is operating, regulations providing procedures and methods of enforcement. Notwithstanding provisions of section 553 of title 5 of the United States Code, such regulations may be promulgated without general notice of proposed rulemaking, and such regulations may take effect on the date they are published in the Federal Register. Such regulations shall remain in force and effect with respect to persons and vessels subject to the jurisdiction of the United States until the last date on which the recommendations referred to in paragraph (1) can take effect under paragraph (3) of article VIII of the Convention, and if such recommendations do take effect under the Convention with respect to the United States on or before such last date, such regulations shall remain in force and effect, subject to the provisions of the Convention and this Act, for so long as such recommendations are so in effect.

#### VIOLATIONS; FINES AND FORFEITURES; APPLICATION OF RELATED LAWS

SEC. 7. (a) It shall be unlawful—

(1) for any person in charge of a fishing vessel or any fishing vessel subject to the jurisdiction of the United States to engage in fishing in violation of any regulation adopted pursuant to section 6 of this Act; or

(2) for any person subject to the jurisdiction of the United States to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish which he knows, or should have known, were taken or retained contrary to the recommendations of the Commission made pursuant to article VIII of the Convention and adopted as regulations pursuant to section 6 of this Act, without regard to the citizenship of the person or vessel which took the fish.

(b) It shall be unlawful for the master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to fail to make, keep, or furnish any catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this Act to be made, kept, or furnished by such master or person.

(c) It shall be unlawful for the master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to refuse to permit any person authorized to enforce the provisions of this Act and any regulations adopted pursuant thereto, to board such vessel and inspect its catch, equipment, books, documents, records, or other articles or question the persons onboard in accordance with the provisions of this Act, or the Convention, as the case may be, or to obstruct such officials in the execution of such duties.

(d) It shall be unlawful for any person to import, in violation of any regulation adopted pursuant to section (c) or (d) of this Act, from any country, any fish in any form of those species subject to regulation pursuant to a recommendation of the Commission, or any fish in any form not under regulation by the Commission, during the period such fish have been denied entry in accordance with the provisions of section 6(c) or (d) of this Act. In the case of any fish as described in this subsection offered for entry in the United States, the Secretary shall require proof satisfactory to him that such fish is not ineligible for such entry under the terms of section 6(c) or (d) of this Act.

(e) (1) Any person who--

(A) violates any provision of subsection (a) of this section shall be assessed a civil penalty of not more than \$25,000, and for any subsequent violation of such subsection (a) shall be assessed a civil penalty of not more than \$50,000;

(B) violates any provision of subsection (b) or (c) of this section shall be assessed a civil penalty of not more than \$1,000, and for any subsequent violation of such subsection (b) or (c) shall be assessed a civil penalty of not more than \$5,000; or

(C) violates any provision of subsection (d) of this section shall be assessed a civil penalty of not more than \$100,000.

(2) The Secretary is responsible for the assessment of the civil penalties provided for in paragraph (1). The Secretary may remit or mitigate any civil penalty assessed by him under this subsection for good cause shown.

(3) No penalty shall be assessed any violation is given notice and opportunity for a hearing with respect to such violation.

(4) Upon any failure of any person to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action.

(f) All fish taken or retained in violation of subsection (a) of this section, or the monetary value thereof, may be forfeited.

(g) All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a cargo for violation of the customs laws, the disposition of such cargo or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act.

#### ENFORCEMENT

SEC. 8. (a) Any person authorized in accordance with the provisions of this Act to enforce the provisions of this Act and the regulations issued thereunder may--

(1) with or without a warrant, board any vessel subject to the jurisdiction of the United States and inspect such vessel and its catch and, if as a result of such inspection, he has reasonable cause to believe that such vessel or any person on board is engaging in operations in violation of this Act or any regulations issued thereunder, he may, with or without a warrant or other process, arrest such person;

(2) arrest, with or without a warrant, any person who violates the provisions of this Act or any regulation issued thereunder in his presence or view;

(3) execute any warrant or other process issued by an officer or court of competent jurisdiction; and

(4) seize, whenever and wherever lawfully found, all fish taken or retained by a vessel subject to the jurisdiction of the United States in violation of the provisions of this Act or any regulations issued pursuant thereto. Any fish so seized may be disposed of pursuant to an order of a court of competent jurisdiction, or, if perishable, in a manner prescribed by regulation of the Secretary.

(b) To the extent authorized under the convention or by agreements between the United States and any contracting party concluded pursuant to section 5(b) of this Act for international enforcement, the duly authorized officials of such party shall have the authority to carry out the enforcement activities specified in section 8(a) of this Act with respect to persons or vessels subject to the jurisdiction of the United States, and the officials of the United States authorized pursuant to this section shall have the authority to carry out the enforcement activities

specified in section 8(a) of this Act with respect to persons or vessels subject to the jurisdiction of such party, except that where any agreement provides for arrest or seizure of persons or vessels under United States jurisdiction it shall also provide that the person or vessel arrested or seized shall be promptly handed over to a United States enforcement officer or another authorized United States official.

(c) Notwithstanding the provisions of section 2464 of title 28, United States Code, when a warrant of arrest or other process in rem is issued in any cause under this section, the marshal or other officer shall stay the execution of such process, or discharge any fish seized if the process has been levied, on receiving from the claimant of the fish a bond or stipulation for the value of the property with sufficient surety to be approved by a judge of the district court having jurisdiction of the offense, conditioned to deliver the fish seized, if condemned, without impairment in value or, in the discretion of the court, to pay its equivalent value in money or otherwise to answer the decree of the court in such cause. Such bond or stipulation shall be returned to the court and judgment thereon against both the principal and sureties may be recovered in event of any breach of the conditions thereof as determined by the court. In the discretion of the accused, and subject to the direction of the court, the fish may be sold for not less than its reasonable market value at the time of seizure and the proceeds of such sale placed in the registry of the court pending judgment in the case.

#### COOPERATION: COMMISSION'S FUNCTIONS NOT RESTRAINED BY THIS ACT OR STATE LAWS

SEC. 9. (a) The United States Commissioners, through the Secretary of State and with the concurrence of the agency, institution, or organization concerned, may arrange for the cooperation of agencies of the United States Government, and of State and private institutions and organizations in carrying out the provisions of article IV of the Convention.

(b) All agencies of the Federal Government are authorized, upon the request of the Commission, to cooperate in the conduct of scientific and other programs, and to furnish facilities and personnel for the purpose of assisting the Commission in carrying out its duties under the Convention.

(c) None of the prohibitions deriving from this Act, or contained in the laws or regulations of any State, shall prevent the Commission from conducting or authorizing the conduct of fishing operations and biological experiments at any time for purposes of scientific investigation, or shall prevent the Commission from discharging any other duties prescribed by the Convention.

(d) (1) Except as provided in paragraph (2) of this subsection, nothing in this Act shall be construed so as to diminish or to increase the jurisdiction of any State over the territorial waters of that State.

(2) If the Secretary determines on the record after opportunity for agency hearing that any State whose territorial waters border on any Convention area--

(A) has not, within a reasonable time after the promulgation of regulations pursuant to this Act to implement any conservation recommendation of the Commission which is accepted by the United States enacted laws or promulgated regulations which implement such recommendation within territorial waters of that State; or

(B) has enacted such laws or promulgated such regulations, but such laws or regulations--

(i) are less restrictive than the regulations promulgated pursuant to this Act to implement such recommendation of the Commission, or

(ii) are not effectively enforced,

the regulations promulgated pursuant to this Act to implement such recommendation shall apply within the territorial waters of such State until such time as the Secretary determines that the State is effectively enforcing within its territorial waters measures which are not less restrictive than such regulations.

(e) To insure that the purposes of subsection (d) are carried out, the Secretary shall undertake a continuing review of the laws and regulations of all States to which subsection (d) applies or may apply and the extent to which such laws and regulations are enforced.

#### APPROPRIATIONS

SEC. 10. There are authorized to be appropriated out of any moneys in the Treasury not otherwise appropriated, for fiscal year 1976, the period beginning July 1, 1976, and ending September 30, 1976, and fiscal year 1977 such sums as

may be necessary for carrying out the purposes and provisions of this Act, including—

- (1) necessary travel expenses of the United States Commissioners, Alternate United States Commissioners, and authorized advisors in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code; and
- (2) the United States share of the joint expenses of the Commission as provided in article X of the convention.

#### SEPARABILITY

SEC. 11. If any provision of this Act or the application of such provision to any circumstance or persons shall be held invalid, the validity of the remainder of the Act and the applicability of such provision to other circumstances or persons shall not be affected thereby.

#### PURPOSE OF THE LEGISLATION

The purpose of this legislation is to give effect to the International Convention for the Conservation of Atlantic Tunas.

In achieving this purpose, the legislation would authorize and direct the Secretary of Commerce to administer and enforce the provisions of the Convention and this Act; to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and this Act and, with concurrence of the Secretary of State, to cooperate with the authorized officials of the Government of any party to the Convention. The legislation also permits the Secretary of Commerce to utilize, with the concurrence of the Secretary of the department in which the Coast Guard is operating, by agreement with any other Federal department or agency, or the agency of any State or the Commonwealth of Puerto Rico, the personnel, services and facilities of that agency for enforcement purposes.

In addition, the Act would authorize the appointment of Commissioners and alternate commissioners by the President to represent the United States Government in the Commission and authorize the Commissioners to appoint an advisory committee. Also, it would authorize the Secretary of State to receive, accept, or object to conservation recommendations made by the Commission and authorize the Secretary of Commerce to promulgate and enforce such regulations to ensure compliance of U.S. fishermen with conservation measures. Finally, it would authorize the Secretary of Commerce to cooperate in carrying out the scientific and other programs of the Commission.

H.R. 5522 was introduced on March 26, 1975, by Mr. Leggett of California.

A bill similar to H.R. 5522 was introduced in the 93rd Congress in the form of H.R. 6714, as a result of an Executive Communication from the Department of State. That legislation was similar to H.R. 5522 and was the subject of hearings before the House Foreign Affairs Committee during the 93rd Congress. Disagreement over the bill emerged between members of the executive branch of the Government and the fishing industry. In an attempt to resolve the Government-industry disagreement over this legislation, a number of meetings were held. H.R. 5522, a clean bill, was ultimately introduced as a Government-industry effort to develop legislation acceptable to both parties and was referred to the Committee on Merchant Marine and Fisheries for consideration.

The Subcommittee on Fisheries and Wildlife Conservation and the Environment held hearings on H.R. 5522 on May 12, 1974. All witnesses at the hearings either supported H.R. 5522 or the Administration's version of the bill, which was very similar. Favorable testimony was received from the Departments of State, Commerce, and Transportation (Coast Guard), Tuna Research Foundation, American Tunaboat Association, and the National Coalition for Marine Conservation.

In its report on the legislation, the Department of Interior supported implementation of the International Convention for the Conservation of Atlantic Tunas (ICCAT), but deferred to the Departments of Commerce and State as to the merits of H.R. 5522.

The Department of State, in its report, supported enactment of the legislation to implement ICCAT and outlined the differences between H.R. 5522 and the Administration's proposal. The Department further stated that the differences between the two bills could be worked out so as to result in legislation satisfactory to all concerned.

The Department of Commerce, in its report, supported enactment of the legislation and the proposals presented by the Department of State.

Although the Department of Transportation did not report on the legislation, the Coast Guard witness at the hearings testified in support of the legislation and endorsed the Department of State's version of the bill.

There were two main differences between H.R. 5522 and the Administration's proposal. The first had to do with the utilization of State personnel as Federal law enforcement agents. The proposal would make it a Federal offense for anyone to assault personnel of the States when functioning as Federal law enforcement agents. The Committee felt that this proposal was a piecemeal approach to an overall problem and that such a proposal should be delayed until consideration could be given to making it applicable to State personnel serving as law enforcement agents under the authority of other similar Acts, such as the North Pacific Fisheries Act of 1954 and the Tuna Conventions Act of 1950. The second difference had to do with the agency primarily responsible for administering the legislation as it relates to enforcement. The Department of State proposed that the Coast Guard be the lead agency in this regard and that the regulations adopted under the Act would be adopted with the concurrence of the Secretary of Commerce. H.R. 5522 would provide that the Secretary of Commerce be the lead agency and that such regulations be adopted in consultation with the Coast Guard. The Committee preferred the latter approach since it felt that the same result would be achieved regardless of which agency served as the lead agency. Also, the Committee felt the latter approach would result in less confusion and the fishermen preferred this approach. They argued that they would be faced with the responsibility of having to coordinate with two agencies administering the same law if the Department of State proposal was adopted; this type of approach had proved unsatisfactory in the past and they preferred the approach provided by H.R. 5522, which placed the administration of the Act in a single agency, the Department of Commerce.



After giving thorough consideration to the evidence presented at the hearings and the Departmental reports, the Committee unanimously ordered reported to the House, H.R. 5522, with an amendment, by voice vote. The amendment, which would strike out all after the enacting clause and insert new language, will be discussed in the section-by-section analysis of this report.

#### BACKGROUND AND NEED FOR THE LEGISLATION

The International Convention for the Conservation of Atlantic Tunas (ICCAT) was signed in Rio de Janeiro on May 14, 1966. It was ratified by the United States on April 24, 1967 and entered into force on March 21, 1969 upon receiving the required ratifications of seven of the parties to the Convention. Parties to the Convention presently include the United States, Canada, Brazil, Cuba, France, Portugal, Spain, Ghana, the Ivory Coast, Morocco, Senegal, South Africa, Japan and Korea. The governments of the Dominican Republic, Gabon and Venezuela have signed the Convention but have not yet ratified it. Much of the credit for bringing the International Commission for the Conservation of Atlantic Tunas into being belongs to the United States. The United States has had years of experience in the eastern Pacific with the Inter-American Tropical Tuna Commission and had been aware of the need for international cooperation and scientific conservation programs to maintain tuna resources in a highly productive condition.

The Convention was a response to the increasing exploitation of tuna resources of the Atlantic Ocean by a large number of nations of Europe, Africa, the Americas and Asia. It further indicates the concern of fishery experts of those nations over the danger of over-fishing and the decline in productivity levels of stock of tunas and tuna-like fishes. The parties to the Convention established ICCAT in order to provide an effective program of international cooperation in research and conservation.

The Convention provides for the establishment of a Commission and states that each of the contracting parties shall be represented on the Commission by not more than three delegates. The Commission, which is required to meet once every two years is charged with the responsibility of conducting research "on the abundance of tuna and tuna-like fishes, biometry and ecology of the fishes, the oceanography of their environment, and the effects of natural and human factors upon their abundance." In carrying out this responsibility, the Commission is directed to utilize, to the maximum extent possible, the services and information of agencies of the contracting nations.

The Commission is also empowered, on the basis of scientific information, to make recommendations to maintain the population of Atlantic tunas "at levels which will permit the maximum sustainable catch." Each recommendation shall become effective six months after adoption by the Commission. However, any nation may file a formal objection to the recommendation and thus exempt itself from the recommendation's effect. Further, if a majority of the contracting nations file an objection to the Commission, that recommendation shall be deemed null and void. Enforcement of the Commission's recommendations is the responsibility of each contracting nation.

To date, the Commission has promulgated three recommendations which have been accepted by all of the contracting parties. The first two recommendations restrict catch size by establishing the minimum weight requirement for bluefin tuna and yellowfin tuna. The minimum weight is 6.4 kilograms and 3.2 kilograms respectively. The third recommendation limits each nation's annual bluefin catch to recent levels. The term "recent levels" is left undefined.

Administratively, the Commission is organized into a Council which is in charge of directing staff operations between meetings of the Commission. The Council is required to meet at least once in the interim between regular meetings of the Commission. Additionally, the Commission may establish panels with the responsibility for keeping under review the status of specific species. To date, the Commission has established four panels on (1) Tropical Tunas (primarily yellowfin and skipjack); (2) Temperate Tunas of the Northern Hemisphere (albacore and bluefin); (3) Temperate Tunas of the Southern Hemisphere (albacore and bluefin); and (4) Other Species. The U.S. is a member of the Council and also each panel.

The Commission's activities are supported by contributions from each of the contracting parties. Each nation contributes annually an amount equal to \$1,000 for every Commission and panel member. If that amount is insufficient to meet the Commission budget, each nation contributes an additional amount in proportion to (1) the membership on the Commission and the panels; (2) its round weight catch of Atlantic tuna. Last year, the Commission's budget was \$230,000 of which the United States contributed approximately \$30,000.

Under the terms of the Convention, the Commission is directed to cooperate with and coordinate its efforts with other international fisheries commissions. However, no other international commission presently in force has jurisdiction with respect to Atlantic tuna and thus, as a practical matter, ICCAT operates independently.

Although the United States ratified the Convention in 1967, it does not yet possess statutory authority to carry out its provisions. In addition, the United States has no means of implementing conservation measures recommended by the Commission. In order to assist in protecting the Atlantic Bluefin Tuna, the Department of Commerce recently proposed to list this species as a threatened species pursuant to the Endangered Species Act of 1973. This interim action was taken due to the lack of statutory authority to implement the Commission recommendations, and because this was the only conservation alternative open to it. This legislation would provide that statutory authority. The failure to enact this type of domestic legislation could, in the long run, have adverse consequences for our Atlantic tuna resources and could have a detrimental effect on U.S. credibility with other nations.

#### WHAT THE BILL DOES: SECTION-BY-SECTION ANALYSIS

As indicated in the legislative background of this report, the Committee ordered reported to the House H.R. 5522, with an amendment. This was accomplished by striking out all after the enacting clause and substituting new language.

There follows a section-by-section summary of H.R. 5522, accompanied by discussion where appropriate.

## SECTION 1

Section 1 of the bill would provide a short title for the legislation. The Act would be cited as the "Atlantic Tunas Convention Act of 1975."

## SECTION 2

Section 2 of the bill would define various terms used throughout the bill.

## SECTION 3

Section 3 of the bill, as introduced, would authorize the President to appoint three Commissioners to serve as United States delegates on the Commission, the Council, and panels of the Commission. The Commissioners would serve without receiving compensation for their services.

Of the three Commissioners to be appointed by the President, one was required to be an official of the Department of Commerce. The President was required to select the other two from individuals residing in a State who were knowledgeable in the principles of fisheries and at least one of such individuals could not be a salaried employee of a State, any political subdivision thereof, or of the Federal Government.

The Committee, in its amendment to the legislation, made several changes to this section of the bill. As amended, section 3 would require the President to appoint as one Commissioner and official of the Department of Commerce. The other two Commissioners would be selected from individuals residing in a coastal State, including the Commonwealth of Puerto Rico. Also, such individuals would be required to be selected from those individuals knowledgeable not only in the principles of fisheries in general but knowledgeable in the principles of commercial tuna fishing or sport tuna fishing, or both. In addition, neither of such Commissioners could be salaried employees of any State or political subdivision thereof, the Commonwealth of Puerto Rico, or the Federal Government.

It is to be noted that tuna and tuna-like fishes covered by the Convention are fished both by sport and commercial fishermen, and it was felt by the Committee that this fact should be reflected in the criteria to be considered by the President when selecting the two non-governmental Commissioners.

Also, as amended, section 3 would authorize the Secretary of State, in consultation with the Secretary of Commerce, to designate from time to time Alternate Commissioners to serve when the regular Commissioners could not be present at a meeting of the Commission, Council, any Panel, or the Advisory Committee. This language is consistent with the language of its sister Act, the Tuna Conventions Act of 1950, which allows the appointment of Alternate Commissioners.

## SECTION 4

Section 4 of the bill would authorize the Commissioners to appoint an Advisory Committee of not less than five nor more than twenty individuals who would be selected from the various groups concerned with the Convention. Members of the Advisory Committee could re-

ceive no compensation for their services. On approval of the Commissioners, not more than three of the members of the Advisory Committee could be paid for their actual transportation expenses and per diem while in attendance at meetings of the Commission or a panel thereof.

As amended by your Committee, the Advisory Committee Members would be limited to a term of two years. However, they would be eligible for reappointment. With respect to their attendance at official meetings, this section, as amended, would provide that if three members were designated to attend such meetings, then their transportation expenses and per diem would be required to be paid. However, if more than three members were designated to attend by the Advisory Committee, then those in excess of three could (not required to) be paid for their travel expenses and per diem.

## SECTION 5

Section 5, subsection (a) of the bill, would authorize the Secretary of State, on behalf of the United States, to receive communications of the Commission and to deal directly with appropriate authorities, with the concurrence of the Secretary of Commerce, and for matters relating to enforcement, of the Secretary of the department in which the Coast Guard is operating. This section would ensure that a recommendation of the Commission "does not become effective for the United States prior to its becoming effective for all contracting parties conducting fisheries affected by such recommendation on a meaningful scale . . ." unless "the purposes of the Convention would be served by allowing a recommendation to take effect for the United States at some earlier time."

Subsection (b) would authorize the Secretary of State, in consultation with the Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating, to enter into agreements with any contracting party, in order to enforce the provisions of the Convention. This is in conformity with paragraph 3 of Article IX of the Convention which pertains to collaboration between contracting parties to ensure international enforcement and implementation of ICCAT provisions. This section also would authorize U.S. personnel and personnel of other nations to enforce the Convention with respect to one another's citizens under appropriate regulations of each affected party. However, enforcement authority within our territorial sea is the responsibility of the United States and would be reserved to her alone; the agreement also would prohibit the prosecution of or assessment of penalties against U.S. Citizens and vessels by foreign countries.

## SECTION 6

Section 6, subsection (a) of the bill, would delegate to the Secretary of Commerce the responsibility for promulgating regulations to administer and enforce the provisions of the Convention. In carrying out his functions, the Secretary would be authorized to use personnel and facilities of any agency of the State or Federal Government.

Subsection (b) would assign enforcement authority under the provisions of this Act to the Secretary of the department in which the Coast Guard is operating, in cooperation with the Secretary of Com-

merce and the Customs Service. The Secretary of Commerce would be required to adopt such regulations as may be necessary to provide for the procedures and methods of enforcement.

Subsection (c) would provide for the promulgation of regulations required to carry out the recommendations of the Commission. These regulations would be required to be published in the Federal Register by the Secretary of Commerce and interested individuals would be afforded an opportunity to participate in the rule-making through the submission of written comments and materials. After publication of such regulations, such regulations would be applicable to all vessels and persons subject to the jurisdiction of the United States on such date as the Secretary would prescribe. Such regulations could cover one or more of the species covered by the Convention, divide the Convention waters into areas, establish one or more open seasons, limit the size of the fish and quantity of catch, require the keeping of records of operations, and satisfactory proof on the regulated fish offered for entry into the United States.

When the Secretary of Commerce promulgated any regulations to implement the recommendations of the Convention, he would be required to promulgate additional regulations with the concurrence of the Secretary of State to prohibit the entry into the U.S. from any nation of fish (or fish products) in any form when those species were taken in a manner or under circumstances in violation of the conservation recommendations and when a nation's vessels were being used in fishing in the Convention area in such ways that would diminish the conservation recommendations of the Commission. If a nation's vessels continue to threaten the achievement of the Commission's recommendations, the Secretary of Commerce, with the concurrence of the Secretary of State, would be authorized to prohibit the entry into the U.S. of all fish in any form covered by the convention and taken in the Convention area, even if such species were not yet the subject of explicit regulations in accordance with Commission recommendations.

As reported, the Committee added a new subsection (d) to section 6 of the bill to provide for the implementation of emergency regulations with respect to the recent recommendations of the Council.

Subsection (d) (1) would provide that, notwithstanding the procedures to be followed under section 5(a) of the bill (which has to do with the waiting period before recommendations of the Commission may come into effect) and subsection (c) of this section of the bill which has to do with the proposed rule-making procedures to be followed when promulgating regulations to carry out the recommendations of the Commission) the recommendations of the Commission concerning bluefin tuna (*Thunnus thynnus thynnus*) proposed at the third regular meeting of the Council (November 20 through November 26, 1974) would apply to persons and vessels subject to the jurisdiction of the United States immediately upon the taking effect of the regulations promulgated under paragraph 2 of this subsection.

Subsection (d) (2) would require the Secretary, not later than 30 days after the date of enactment of the legislation, to promulgate such regulations as may be necessary to carry out the 1974 recommendations of the Council. Naturally, these regulations would have to be promul-

gated without going through the regular proposed rule-making process because of the immediate need to protect the Atlantic bluefin tuna from further decimation. Consequently, the Committee in its wisdom deemed it appropriate in this case to provide that these regulations would come into effect on the date they are published in the Federal Register. Such regulations would remain in effect with respect to persons and vessels subject to the jurisdiction of the United States until the last date on which the recommendations could take effect pursuant to the terms of the Convention. However, if such recommendations do take effect under the Convention with respect to the United States, on or before such date, then the regulations would remain in effect for so long as such recommendations are so in effect. For more discussion on this provision, see the comments under section 9(d) of this section-by-section analysis.

#### SECTION 7

Section 7, subsection (a) of the bill, would make it unlawful for any person in charge of a fishing vessel or any fishing vessel subject to the jurisdiction of the United States to engage in fishing in violation of any regulation adopted pursuant to section 6 of this Act or for any person subject to the jurisdiction of the United States to trade in fish which he knows or should have known were taken or retained contrary to such regulations promulgated under this Act.

Subsections (b) and (c) would make it unlawful for the master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to fail to keep appropriate records called for by the regulations and to refuse to permit any person authorized to enforce the provisions of this Act and regulations promulgated pursuant thereto to board such vessel and inspect its catch, equipment, and records.

Subsection (d) would make it unlawful for any person to import into the United States in violation of any regulation promulgated under section 6 of this Act any fish in any form of those species subject to regulation or those under investigation by the Commission.

Subsection (e) would be required to assess civil penalties against those individuals in violation of the provisions of this Act. In this regard, the penalties would range up to \$25,000 for the first offense and up to \$50,000 for any subsequent offense for any person to engage in fishing in violation of regulations adopted pursuant to section 6 of this Act.

Persons who fail to keep the required records and refuse to allow enforcement officers to board and inspect, as provided for in subsections (b) and (c) of this section, would be subject to civil penalties of up to \$1,000 for the first offense and up to \$5,000 for any subsequent offense. Persons violating the import restrictions provided under subsection (d) of this section would be subject to a civil penalty of not more than \$100,000.

In addition, subsection (e) would authorize the Secretary of Commerce to request of the Attorney General and initiate a civil action against any person who failed to pay a penalty assessed by the Secretary.

Subsections (a) and (g) would make all laws relating to the seizure, judicial forfeiture, and condemnation of cargo for violation of the

Customs laws applicable to seizures and forfeitures incurred under the provisions of this Act.

## SECTION 8

Section 8, subsection (a) of the bill, would prescribe enforcement procedures and how they are to be implemented. Paragraphs (1) through (4) would provide the specifics of enforcement of this Act.

Subsection (b) would insure the participation of the United States in international enforcement systems in accordance with paragraph 3 of Article IX of the Convention. Also to implement the international enforcement agreement, this subsection would provide for the arrest and seizure by personnel of other nations party to the convention of persons and vessel under the jurisdiction of the United States violating agreed upon regulations of the Convention. This subsection also would provide that such persons and vessels shall be promptly turned over to an authorized official of the United States.

Subsection (c) would provide that the execution of a warrant of arrest, other process or seizure of any fish shall be stayed by a Marshal or other officer when a bond or stipulation is received from the accused and approved by a judge of the U.S. District Court having jurisdiction over the offense.

## SECTION 9

Section 9, subsection (a) of the bill, would authorize the United States Commissioners, through the Secretary of State and with the concurrence of the agency, institution, or organization concerned, to arrange for the cooperation of agencies of the Federal and State Governments and of private institutions and organizations in carrying out the provisions of Article IV of the Convention. This Article refers to scientific research functions.

Subsection (b) would enlist the cooperation of all agencies of the Federal Government, upon the request of the Commission, in carrying out scientific and other programs and in providing facilities and personnel to assist the Commission in implementation of duties under the Convention.

Subsection (c) would provide that none of the prohibitions deriving from the Act, or those contained in the laws or regulations of any State, shall prevent the Commission from implementing or authorizing both fishing operations and biological experiments for the purposes of scientific investigations or discharging any other duties prescribed by the Convention.

Subsection (d) of the bill, as introduced, provided that nothing in this Act would be construed as diminishing or increasing the jurisdiction of the States over their respective territorial waters.

In view of the fact that tuna and tuna-like fishes covered by the Convention migrate in and out of the territorial waters of the coastal States along the Atlantic Coast, it was concluded by the Committee, in its wisdom, that in order to provide the protection to which these fish would be entitled at certain times and under certain circumstances, it would be necessary to allow Federal regulations to be applicable with-

in the territorial waters of the affected Coastal States. Therefore, the Committee amended subsection (d) to so provide.

As amended, subsection (d) provides that if the Secretary of Commerce determines on the record, after an opportunity for agency hearing, that an State whose territorial water borders on any conservation area (A) has not, within a reasonable time after the promulgation of regulations pursuant to this Act with respect to any recommendation of the Commission accepted by the United States, enacted laws and promulgated appropriate regulations to implement such recommendations within its territorial waters or (B) has enacted such laws or promulgated such regulations, but such laws or regulations are less restrictive than the Federal regulations pertaining to such recommendation of the Commission or such State laws or regulations are not being effectively enforced, then such Federal regulations will apply within the territorial waters of such State until the Secretary determines that such State is effectively enforcing regulations within its territorial waters which are not less restrictive than the Federal regulations.

New subsection (e) would require the Secretary to undertake a continuing review of the laws and regulations of all States to which subsection (e) applies in order to insure its purposes are carried out.

The Committee is cognizant of the immediate conservation needs that exist with regard to bluefin tuna in the Atlantic Ocean. It was because of these needs that ICCAT recommended immediate regulatory measures. Recognizing this need, the Committee included language in section 6(d) of the bill requiring the immediate implementation of the ICCAT recommendations for the 1975 bluefin tuna fishing season.

The Committee is also cognizant of the difficulties involved in the States along the Atlantic Coast developing appropriate conservation programs within their territorial waters within the time frame provided by section 9(d)(2) of this legislation.

Consequently, the Committee feels that it would not be objectionable if the provisions of section 9(d)(2) of the bill are waived for the 1975 bluefin tuna season in view of the need to promulgate regulations that would provide immediate protection to bluefin tuna. However, if such a waiver is utilized by the Secretary of Commerce in his discretion, then the Committee would expect all action to declare the bluefin tuna a threatened species under the Endangered Species Act of 1973 to be terminated.

## SECTION 10

Section 10 of this bill would authorize to be appropriated such sums as may be necessary to carry out the provisions of this Act for Fiscal Year 1976, the transition period (beginning July 1, 1976, and ending September 30, 1976), and Fiscal Year 1977.

Included in the measures to be covered under this section would be the necessary travel expenses of the United States Commissioners, Alternate Commissioners, and authorized Advisors in attendance at official meetings. Such expenses allowed would be required to be in accordance with Federal Travel Regulations and related Acts. In addi-

tion. the United States share of the joint expenses of the Commission would be included under this provision of the Act.

#### SECTION 11

Section 11 of the bill would provide a standard separability clause protecting the applicability and validity of the affected sections of the Act if part of it should ever be ruled to be inapplicable or invalid.

#### COST OF THE LEGISLATION

In the event the legislation is enacted into law, it is estimated by the Committee—based on information supplied by the Department of Commerce—that the cost to the Federal Government in carrying out its responsibilities under the Act will be slightly over \$600,000 a year. This sum covers the areas of enforcement, research and international negotiations.

In addition, based on information supplied by the Department of State, it is estimated the cost to the Federal Government in carrying out its responsibilities under the Act would be approximately \$40,000 a year.

No estimate was received from the Department in which the Coast Guard is operating with respect to the cost of carrying out its responsibilities under the Act.

#### COMPLIANCE WITH CLAUSE 2(1)(3) OF RULE XI

With respect to the requirements of Clause 2(1)(3) of House Rule XI of the Rules of the House of Representatives—

(A) No oversight hearings were held on the administration of this Act during this session of Congress, beyond the one day of hearings on the particular problem held by the Subcommittee on Fisheries and Wildlife Conservation and the Environment. The Subcommittee does plan to hold oversight hearings on the administration of this Act before the end of this Congress.

(B) Section 308(a) of the Congressional Budget Act of 1974 is not presently in effect. Therefore, no statement is furnished.

(C) No estimate and comparison of costs has been received by the Committee from the Director of the Congressional Budget Office, pursuant to section 403 of the Congressional Budget Act of 1974.

(D) The Committee on Government Operations has sent no report to the Committee on Merchant Marine and Fisheries pursuant to Clause 2(b)(2) of Rule X.

#### INFLATIONARY IMPACT STATEMENT

Pursuant to Clause 2(1)(4) of Rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 5710 would have no significant inflationary impact on the prices and costs in the national economy.

#### CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

#### DEPARTMENTAL REPORTS

H.R. 5522 was the subject of reports received from the Departments of State, Commerce and Interior. The reports follow herewith:

DEPARTMENT OF STATE,  
Washington, D.C., May 9, 1975.

HON. LEONOR K. SULLIVAN,  
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: This is in response to your letter of April 4 requesting comments on H.R. 5522, a bill to give effect to the International Convention for the Conservation of Atlantic Tunas.

The Department of State supports the enactment of legislation to implement this important convention designed to ensure the proper conservation and management of the tuna resources of the Atlantic Ocean. We believe it is critical that such legislation be enacted as soon as possible so that the United States is able to carry out its responsibilities as a member of the International Commission for the Conservation of Atlantic Tunas, established under the authority of the convention.

The Administration is submitting a bill to the Congress which, like H.R. 5522, would give effect to the International Convention for the Conservation of Atlantic Tunas. The two bills are very similar and only differ, for the most part, in relatively minor ways. The differences between the Administration bill and H.R. 5522, and our views regarding these discrepancies, are briefly noted below.

Section 3 of both bills establishes certain criteria for the selection of Commissioners to be appointed by the President. The administration bill provides that two of the three Commissioners shall be persons "residing in a State, the residents of which maintain a substantial fishery in the convention area . . .", while H.R. 5522 provides for two Commissioners to be persons "residing in a State, knowledgeable in the principles of fisheries . . .". It is our view that the non-Government Commissioners representing the United States should have a good understanding of the problems and needs of the fishermen who pursue the Atlantic tuna resources. Such a person should, of course, be knowledgeable in the principles of fisheries, and it is possible that both non-Government Commissioners need not reside in a State the residents of which maintain a substantial fishery in the area. We believe, however, that the interests of those who are directly involved in the fishery must be properly represented.

H.R. 5522 provides that Commissioners shall fix the terms of office of the advisory committee members, without specifying a particular time period. We believe it might be preferable, in order to ensure a periodic review of the Committee's membership, to fix definite terms of office. Thus, we would suggest the inclusion of language providing for a two-year term of appointment for Committee members. Moreover, H.R. 5522, as drafted, would appear to limit the number of advisory committee members who can be paid for expenses and per diem to three members. We believe that in order to make the bill completely consistent with the provisions of the Advisory Committee Act, provision should be made for payment of expenses of additional members, in addition to those members that are required to be reimbursed under

the bill as it now stands. Also, provision should be made for payment of expenses incident to attendance at committee meetings. The Administration bill is drafted so as to provide for this additional reimbursement.

In addition, H.R. 5522, is defining which vessels may be subject to enforcement by authorized state or Puerto Rican enforcement agents under Section 6(a), uses the term "vessel documented or numbered under the laws of the United States" instead of "vessel subject to the jurisdiction of the United States." The term "subject to the jurisdiction of the United States" is the more frequently used term, and corresponds to the definition in Sections 7 and 8 which establish fines and penalties, and set forth authorized enforcement activities. Therefore, we believe the use of this term in section 6(a) would be preferable also. Further, H.R. 5522 does not contain a section, similar to section 6(b) in the Administration Bill, which would, in effect, make it a federal offense to assault personnel of the states or of the Commonwealth of Puerto Rico who are functioning as Federal law enforcement agents under Section 6(a) of the Act. We believe this provision is important to effective administration of the Act, should such officials be designated as enforcement agents under Section 6(a). Thus we recommend the addition of such a section to H.R. 5522.

H.R. 5522 authorizes the Secretary of Commerce to adopt regulations with respect to international enforcement procedures developed pursuant to article IX of the convention. On the other hand, the bill the Administration is introducing, gives this function to the Secretary of the Department in which the Coast Guard is operating. We believe the Department in which the Coast Guard is operating is a proper agency to promulgate regulations in this regard, and we hope this difference can be worked out to the satisfaction of all involved.

Sections 7(e), (f), and (g) provide for a fine rather than making persons "subject to a civil penalty of" a certain amount. We believe the latter language makes it clear that the fine is a civil penalty, and should therefore be included in the bill.

Finally, in Section 10(a), we believe the phrase "without regard to" should be changed to read "in accordance with" so that these Commissioners would be subject to the same rules and procedures applicable to others traveling on U.S. government business. We also believe this section should refer to Federal Travel Regulations, which became effective May 1, 1973, and superseded the Standardized Government Travel Regulations.

The Department of State believes that these differences in the two bills for implementing the International Convention for the Conservation of Atlantic Tunas can be easily worked out so as not to prevent legislation satisfactory to all concerned from emerging. We believe that implementing legislation is vitally needed and urge its enactment at the earliest possible date.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,

ROBERT J. McCLOSKEY,  
Assistant Secretary for  
Congressional Relations.

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,  
Washington, D.C., May 9, 1975.

HON. LEONOR K. SULLIVAN,  
Chairman, Committee on Merchant Marine and Fisheries, House of  
Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: This is in response to your request for our comments on H.R. 5522, a bill: "To give effect to the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro May 14, 1966, by the United States of America and other countries, and for other purposes".

H.R. 5522 is a bill which has been developed to implement the International Convention for the Conservation of Atlantic Tunas. During the 93d Congress the Administration submitted a similar bill, H.R. 6714, which was the subject of hearings before the House Foreign Affairs Committee. In May of 1973, Administration witnesses testified in support of H.R. 6714 but during the course of that hearing several differences emerged between the representatives of the executive branch and the tuna industry over some of the provisions of that bill. At the request of the Subcommittee Chairman, the Honorable Donald M. Fraser, a number of government-industry meetings were held to resolve the difficulties associated with the original bill. H.R. 5522 generally represents the result of the changes which were developed during those meetings.

The International Convention for the Conservation of Atlantic Tunas (ICCAT) has been in force for over five years. The United States has an international responsibility to discharge its obligations under the treaty. This cannot be done without enactment of implementing legislation. Such obligations include implementation of the international conservation measures adopted by the Commission which was established pursuant to the Convention. This Commission is designed to provide a means for achieving international cooperation in the management of the highly migratory tuna throughout the Atlantic. For example, in 1972, the Commission agreed unanimously to prohibit the landing of yellowfin tuna under 3.2 kg. The United States has had no means of enforcing this conservation measure.

United States scientists have indicated that conservation measures are needed for Atlantic bluefin tuna. At the 1974 meeting, the ICCAT Council adopted two conservation measures concerning Atlantic bluefin tuna—a 6.4 kg. minimum size regulation and a limit on fishing mortality of bluefin to recent levels for a period of one year. These regulatory proposals, which were made by the United States, have now been accepted by a majority of the ICCAT member nations. Unless there is objection by an ICCAT Contracting Government, the conservation recommendations will become effective on August 10, 1975. Because statutory authority to implement the convention recommendations does not exist, the Department of Commerce has proposed recently that the Atlantic bluefin tuna be listed as a threatened species pursuant to the Endangered Species Act of 1973. This step would not be necessary if the authority to implement the ICCAT treaty existed today.

It is of utmost importance to us for the United States to be able to participate effectively in the international conservation programs for

Atlantic tuna and tuna-like species. Such programs are of interest to a broad sector of the public including recreational as well as commercial fishermen. For the reasons set forth in this letter, we believe that it is essential to enact implementing legislation as early as possible. We believe that the legislation for this purpose being proposed by the Department of State on behalf of the Administration, and which varies only in minor respects from H.R. 5522, would be the appropriate means of achieving this end.

We have been advised by the Office of Management and Budget that they have no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

KARL E. BAKKE,  
*General Counsel.*

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
*Washington, D.C., May 9, 1975.*

HON. LEONOR K. SULLIVAN,  
*Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.*

DEAR MADAM CHAIRMAN: This responds to your request to this Department's views on H.R. 5522, a bill "To give effect to the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro May 14, 1966, by the United States of America and other countries, and for other purposes."

H.R. 5522 would designate three Commissioners and an Advisory Board for United States participation on the International Commission for the Conservation of Atlantic Tuna. It would authorize the Secretary of Commerce to enforce the provisions of the convention and provides penalties for violations of the convention as well as law enforcement powers toward that end.

While we defer to the Departments of Commerce and State as to the merits of H.R. 5522, we support implementation of the ICCAT. Participating countries have recently proposed bluefin tuna conservation measures which are needed to prevent the continued decline of this important commercial fish. Since statutory authority does not exist for implementation of the convention, the Department of Commerce has proposed listing the bluefin tuna as threatened pursuant to the Endangered Species Act of 1973 (*Federal Register*, vol. 40, No. 64, April 2, 1975). This action would not have been necessary had authority existed to implement the ICCAT.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

ROYSTON C. HUGHES,  
*Assistant Secretary of the Interior.*

## ATLANTIC TUNAS CONVENTION ACT OF 1975

—————  
JULY 9 (legislative day, JULY 7), 1975.—Ordered to be printed  
—————

Mr. HOLLINGS, from the Committee on Commerce, submitted the following

### REPORT

[To accompany H.R. 5522]

The Committee on Commerce, to which was referred the bill (H.R. 5522) to give effect to the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro May 14, 1966, by the United States of America and other countries, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

Page 3, line 7, add the following new paragraph:

(10) the term 'State' includes each of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

Page 3, line 9, delete existing section 3 down through line 14 on page 4, and insert in lieu thereof the following:

Sec. 3(a) The United States shall be represented by not more than three Commissioners who shall serve as delegates of the United States on the Commission, and who may serve on the Council and Panels of the Commission as provided for in the Convention. Such Commissioners shall be appointed by and serve at the pleasure of the President. Not more than one such Commissioner shall be a salaried employee of any State or political subdivision thereof, or the Federal Government. The Commissioners shall be entitled to select a



Chairman and to adopt such rules of procedures as they find necessary.

(b) The Secretary of State, in consultation with the Secretary, may designate from time to time and for periods of time deemed appropriate Alternate United States Commissioners to the Commission. Any Alternate United States Commissioner may exercise at any meeting of the Commission, Council, any Panel, or the advisory committee established pursuant to section 4 of this Act, all powers and duties of a United States Commissioner in the absence of any Commissioner appointed pursuant to subsection (a) of this section for whatever reason. The number of such Alternate United States Commissioners that may be designated for any such meeting shall be limited to the number of United States Commissioners appointed pursuant to subsection (a) of this section who will not be present at such meeting.

(c) The United States Commissioners or Alternate Commissioners, although officers of the United States while so serving, shall receive no compensation for their services as such Commissioners or Alternate Commissioners.

Page 8, lines 22 and 23, delete the words "or the Commonwealth of Puerto Rico".

Page 9, lines 3 and 4, and lines 5 and 6, delete the words "or of the Commonwealth of Puerto Rico" and "or of the Commonwealth of Puerto Rico".

Page 13, line 18, delete the words "of Commerce".

Page 21, lines 23 and 24, delete the words "over the territorial waters of that State" and insert in lieu thereof the words "in the territorial sea of the United States".

Page 21, strike lines 25 through 22, page 22, and insert in lieu thereof the following:

(2) In the event a State does not request a formal hearing and after notice by the Secretary, the regulations promulgated pursuant to this Act to implement recommendations of the Commission shall apply within the boundaries of any State bordering on any Convention area if the Secretary determines that any such State.

(A) has not, within a reasonable period of time after the promulgation of regulations pursuant to this Act, enacted laws or promulgated regulations which implement any such recommendation of the Commission within the boundaries of such State; or

(B) has enacted laws or promulgated regulations which (i) are less restrictive than the regulations promulgated pursuant to this Act, or (ii) are not effectively enforced.

If a State requests the opportunity for an agency hearing on the record, the Secretary shall not apply regulations promulgated pursuant to this Act within that State's boundaries unless the hearing record supports a determination under paragraphs (A) or (B). Such regulations shall apply until the

Secretary determines that the State is effectively enforcing within its boundaries measures which are no less restrictive than such regulations.

#### PURPOSE AND BRIEF DESCRIPTION

The purpose of this legislation is to implement the agreement between the United States and other fishing nations on the management and conservation of Atlantic tunas. This agreement, the International Convention for the Conservation of Atlantic Tunas, was signed on May 14, 1966, and has been in force for over 5 years. H.R. 5522 is needed to carry out U.S. responsibilities under the Convention.

H.R. 5522 authorizes and directs the Secretary of Commerce to administer the conservation program agreed to under the Convention as it relates to fishing by U.S. citizens and vessels. The Secretary, pursuant to the authority contained in the bill, would promulgate regulations designed to implement conservation recommendations of the governing body created by the Convention—the International Commission for the Conservation of Atlantic Tunas. Enforcement is to be accomplished under the Act by the Secretary of Commerce utilizing the resources of the U.S. Coast Guard, the U.S. Customs Service, and where appropriate, those of coastal States.

The Act would authorize the appointment of Commissioners and Alternate Commissioners to represent the United States on the International Commission. Commissioners and Alternate Commissioners would be chosen by and serve at the pleasure of the President. An advisory committee to the U.S. Commissioners is also authorized. With regard to the functioning of the International Commission, the Secretary of State is designated as the U.S. agency which in the first instance, receives on behalf of the United States reports, requests, and other communications of the Commission and responds thereto. However, decisions to accept or object to recommendations of the International Commission are to be made jointly by the Secretary of State and the Secretary of Commerce, and, if such recommendations relate to enforcement, by the Secretary of Transportation, the department in which the Coast Guard is operating. The bill would also authorize the Secretary of Commerce to cooperate in carrying out the scientific and other programs of the International Commission.

#### BACKGROUND AND NEED

##### *The convention*

The International Convention for the Conservation of Atlantic Tunas (ICCAT) was signed in Rio de Janeiro on May 14, 1966. It was ratified by the United States on April 24, 1967, and entered into force on March 21, 1969, upon receiving the required ratifications of seven parties to the Convention. Countries which are now party to the Convention include the United States, Canada, Brazil, Cuba, France, Portugal, Spain, Ghana, the Ivory Coast, Morocco, Senegal, South Africa, Japan, and Korea. The Governments of the Dominican Republic, Gabon, and Venezuela have signed the Convention but have not yet ratified it.

The ICCAT Convention was a response to the increasing exploitation of tuna resources of the Atlantic Ocean by a growing number of

nations from around the world. While resources were plentiful and fishing capacity remained below stock levels, control over fishing activity was not considered needed. However, evidence began to accumulate in the early 1960's that several stocks of tunas and tuna-like fishes were declining. The fact of overfishing became obvious and ICCAT was conceived. The Convention was created to provide a rational management program based on scientific research and restraint.

The Convention provides for the establishment of a Commission as the decision-making organ of the treaty. Each contracting nation is to be represented on the Commission by not more than three Commissioners. The Commission's primary duties are two-fold: (1) to conduct research "on the abundance of tuna and tuna-like fishes, biometry and ecology of the fishes, the oceanography of their environment, and the effects of natural and human factors upon their abundance"; and (2) to make recommendations, on the basis of scientific information, for action to maintain Atlantic tuna populations "at levels which will permit the maximum sustainable catch". The Commission is required to meet once every two years to conduct its business. In carrying out its duties, the Commission is directed to utilize, to the extent possible, the services and information of agencies of contracting nations.

By the terms of the treaty, each conservation recommendation is to become obligatory six months after adoption by the Commission unless objected to by a contracting nation. Any contracting nation may object to any recommendation by filing a formal objection with the Commission, thereby exempting itself from the recommendation. Furthermore, if a majority of contracting nations file objections with the Commission, that recommendation is deemed null and void. Enforcement of accepted recommendations is the duty of each contracting nation.

To date, the Commission has adopted three recommendations which have been accepted by all contracting nations. Two recommendations restrict catch size by establishing minimum weight requirements for bluefin tuna and yellowfin tuna, 6.4 kilograms and 3.2 kilograms respectively. The third recommendation limits each nation's annual bluefin catch to "recent levels". However, the term "recent levels" is left undefined.

Administratively, the Commission is organized into a Council (which directs staff operations between Commission meetings) and several Panels (which closely follow the status of a particular species). There are four Panels serving the Commission: (1) one on tropical tunas (primarily yellowfin and skipjack); (2) one on temperate tunas of the Northern Hemisphere (albacore and bluefin); (3) one on temperate tunas of the Southern Hemisphere (albacore and bluefin); and (4) one on other species. The United States is a member of the Council and of each Panel.

The Commission's activities are supported by contributions from each of the contracting nations. Each nation contributes an amount equal to \$1,000 annually for every Commission and Panel member. If that amount is inadequate to meet the Commission's budget, each nation is to contribute an additional amount in proportion to (1) its membership on the Commission and the Panels; and (2) its round

weight catch of Atlantic tunas. Last year, the Commission's budget was \$230,000 of which the United States contributed approximately \$30,000.

#### *The legislation*

Despite the fact that the United States ratified the ICCAT Convention in 1967, there is no domestic legislative authority to carry out its provisions. In short, the treaty is not self-executing, but must be implemented by legislation. Without such authority, the United States is without power to require compliance by its citizens with the Commission's recommendations for conservation of Atlantic tunas. Lacking such authority, the Secretary of Commerce, in order to protect the Atlantic bluefin tuna and to regulate its taking, has proposed to list this species as endangered under the Endangered Species Act of 1973. That Act is presently the only legal authority available to the Secretary for protection of the declining stock of bluefin tunas.

H.R. 5522 is needed to provide an overall conservation program, agreed to on an international basis, for the conservation of the highly migratory tunas, and to carry out U.S. responsibilities under the Convention.

#### EXPLANATION OF COMMITTEE AMENDMENTS

1. Amendments accepted by the House added the words "and the Commonwealth of Puerto Rico" at several places in the bill. However, these words were not inserted at all places where the word "State" appears. To prevent confusion, the Committee accepted an amendment to add a new definition for the word "State" which includes the Commonwealth of Puerto Rico as well as the other political entities usually included in the term "State."

2. There has been considerable dispute over the criteria to be applied in selecting United States Commissioners. As a compromise, the Committee has decided to mention no specific criteria in the legislation, leaving the selection of Commissioners and Alternate Commissioners to the discretion of the President. However, it seems agreed that one of the Commissioners should be an official of the Department of Commerce and that the other two should at least be knowledgeable with regard to fishery management and conservation.

3. The Committee approved an amendment to enable the U.S. Commissioners to select a Chairman and to adopt such rules of procedure as they find necessary for their meetings.

4. Amendments deleting the words "Commonwealth of Puerto Rico" are merely conforming to amendment 1 above.

5. The amendment deleting the words "of Commerce" is technical.

6. The House approved bill contained language indicating that coastal States have territorial waters. Technically, only the United States has territorial waters. The Committee has amended the bill to reflect this.

7. The House approved bill would require a formal hearing on the record every time the Secretary sought to apply regulations promulgated under this bill within a coastal State's boundaries. Such application may be necessary to carry out the Convention since tunas are migratory species and migrate in and out of waters within more than one State's, or nation's boundaries. The House language would

create the anomaly of requiring a formal hearing even if a State does not object to the application of this legislation to fishing in that State's waters. The Committee amendment would require a formal agency hearing on the record only if a State requests one. Otherwise, the Secretary, upon making a specific determination that a State has not enacted laws or regulations no less restrictive than those promulgated under this legislation or that the State is not effectively enforcing its laws and regulations, may apply Federal law to fishing for Atlantic tunas within a State's boundaries.

#### SECTION-BY-SECTION ANALYSIS

##### SECTION 1

Section 1 of the bill would provide a short title for the legislation. The Act would be cited as the "Atlantic Tunas Convention Act of 1975."

##### SECTION 2

Section 2 of the bill would define various terms used throughout the bill.

##### SECTION 3

Section 3 of the bill, as introduced, would authorize the President to appoint three Commissioners to serve as United States delegates on the Commission, the Council, and panels of the Commission. As amended by the House, section 3 would authorize the Secretary of State, in consultation with the Secretary of Commerce, to designate from time to time Alternate Commissioners to serve when the regular Commissioners could not be present at a meeting of the Commission, Council, any Panel, or the advisory committee. This language is consistent with the language of the Tuna Conventions Act of 1950, which allows the appointment of Alternate Commissioners. Commissioners and Alternate Commissioners would serve without compensation for their services, but would receive travel and per diem allowances.

The House made several changes to this section of the bill. As amended in the Committee on Merchant Marine and Fisheries, section 3 would require the President to appoint as one Commissioner an official of the Department of Commerce. The other two Commissioners would be selected from individuals residing in a coastal State, including the Commonwealth of Puerto Rico. Also, such individuals would be required to be selected from those individuals knowledgeable not only in the principles of fisheries in general but knowledgeable in the principles of commercial tuna fishing or sport tuna fishing, or both. In addition, neither of such Commissioners could be salaried employees of any State or political subdivision thereof, the Commonwealth of Puerto Rico, or the Federal Government. However, because the criteria established by the House Committee has proved to be contentious, the Commerce Committee has adopted an amendment which would leave the choice of Commissioners to the discretion of the President.

##### SECTION 4

Section 4 of the bill would authorize the Commissioners to appoint an Advisory Committee of not less than five nor more than twenty

individuals who would be selected from the various groups concerned with the Convention. Members of the Advisory Committee could receive no compensation for their services. On approval of the Commissioners, not more than three of the members of the Advisory Committee could be paid for their actual transportation expenses and per diem while in attendance at meetings of the Commission or a panel thereof.

The Advisory Committee Members would be limited to a term of two years. However, they would be eligible for reappointment. With respect to their attendance at official meetings, this section would provide that if three members were designated to attend such meetings, then their transportation expenses and per diem would be required to be paid. However, if more than three members were designated to attend by the Advisory Committee, then those in excess of three could (not required to) be paid for their travel expenses and per diem.

##### SECTION 5

Section 5, subsection (a) of the bill, would authorize the Secretary of State, on behalf of the United States, to receive communications of the Commission and to deal directly with appropriate authorities, with the concurrence of the Secretary of Commerce, and for matters relating to enforcement, of the Secretary of the department in which the Coast Guard is operating. This section would ensure that a recommendation of the Commission "does not become effective for the United States prior to its becoming effective for all contracting parties conducting fisheries affected by such recommendation on a meaningful scale . . ." unless "the purposes of the Convention would be served by allowing a recommendation to take effect for the United States at some earlier time."

Subsection (b) would authorize the Secretary of State, in consultation with the Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating, to enter into agreements with any contracting party, in order to enforce the provisions of the Convention. This is in conformity with paragraph 3 of Article IX of the Convention which pertains to collaboration between contracting parties to ensure international enforcement and implementation of ICCAT provisions. This section also would authorize U.S. personnel and personnel of other nations to enforce the Convention with respect to one another's citizens under appropriate regulations of each affected party. However, enforcement authority within our territorial sea is the responsibility of the United States alone; the agreement also would prohibit the prosecution of or assessment of penalties against U.S. citizens and vessels by foreign countries.

##### SECTION 6

Section 6, subsection (a) of the bill, would delegate to the Secretary of Commerce the responsibility for promulgating regulations to administer and enforce the provisions of the Convention. In carrying out his functions, the Secretary would be authorized to use personnel and facilities of any agency of the State or Federal Government.

Subsection (b) would assign enforcement authority under the provisions of this Act to the Secretary of the department in which the

Coast Guard is operating, in cooperation with the Secretary of Commerce and the Customs Service. The Secretary of Commerce would be required to adopt such regulations as may be necessary to provide for the procedures and methods of enforcement.

Subsection (c) would provide for the promulgation of regulations required to carry out the recommendations of the Commission. These regulations would be required to be published in the Federal Register by the Secretary of Commerce and interested individuals would be afforded an opportunity to participate in the rule-making through the submission of written comments and materials. After publication of such regulations, such regulations would be applicable to all vessels and persons subject to the jurisdiction of the United States on such date as the Secretary would prescribe. Such regulations could cover one or more of the species covered by the Convention, divide the Convention waters into areas, establish one or more open seasons, limit the size of the fish and quantity of catch, require the keeping of records of operations, and satisfactory proof on the regulated fish offered for entry into the United States.

When the Secretary of Commerce promulgated any regulations to implement the recommendations of the Convention, he would be required to promulgate additional regulations with the concurrence of the Secretary of State to prohibit the entry into the U.S. from any nation of fish (or fish products) in any form when those species were taken in a manner or under circumstances in violation of the conservation recommendations and when a nation's vessels were being used in fishing in the Convention area in such ways that would diminish the conservation recommendations of the Commission. If a nation's vessels continue to threaten the achievement of the Commission's recommendations, the Secretary of Commerce, with the concurrence of the Secretary of State, would be authorized to prohibit the entry into the U.S. of all fish in any form covered by the convention and taken in the Convention area, even if such species were not yet the subject of explicit regulations in accordance with Commission recommendations.

Section 6(d) of the bill would provide for the implementation of emergency regulations with respect to the recent recommendations of the Council.

Subsection (d)(1) would provide that, notwithstanding the procedures to be followed under section 5(a) of the bill (which have to do with the waiting period before recommendations of the Commission may come into effect) and subsection (c) of this section of the bill (which has to do with the proposed rule-making procedures to be followed when promulgating regulations to carry out the recommendations of the Commission), the recommendations of the Commission concerning bluefin tuna (*Thunnus thynnus thynnus*) proposed at the third regular meeting of the Council (November 20 through November 26, 1974) would apply to persons and vessels subject to the jurisdiction of the United States immediately upon the taking effect of the regulations promulgated under paragraph 2 of this subsection.

Subsection (d)(2) would require the Secretary, not later than 30 days after the date of enactment of the legislation, to promulgate such regulations as may be necessary to carry out the 1974 recommendations of the Council. Naturally, these regulations would have to be promulgated without going through the regular proposed rule-making pro-

cess because of the immediate need to protect the Atlantic bluefin tuna from further decimation. It is appropriate in this case that these regulations come into effect on the date they are published in the Federal Register. Such regulations would remain in effect with respect to persons and vessels subject to the jurisdiction of the United States until the last date on which the recommendations could take effect pursuant to the terms of the Convention. However, if such recommendations do take effect under the Convention with respect to the United States, on or before such date, then the regulations would remain in effect for so long as such recommendations are so in effect. For more discussion on this provision, see the comments under section 9(d) of this section-by-section analysis.

#### SECTION 7

Section 7, subsection (a) of the bill, would make it unlawful for any person in charge of a fishing vessel or any fishing vessel subject to the jurisdiction of the United States to engage in fishing in violation of any regulation adopted pursuant to section 6 of this Act or for any person subject to the jurisdiction of the United States to trade in fish which he knows or should have known were taken or retained contrary to such regulations promulgated under this Act.

Subsections (b) and (c) would make it unlawful for the master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to fail to keep appropriate records called for by the regulations and to refuse to permit any person authorized to enforce the provisions of this Act and regulations promulgated pursuant thereto to board such vessel and inspect its catch, equipment, and records.

Subsection (d) would make it unlawful for any person, to import into the United States in violation of any regulation promulgated under section 6 of this Act any fish in any form of those species subject to regulation or those under investigation by the Commission.

Subsection (e) would be required to assess civil penalties against those individuals in violation of the provisions of this Act. In this regard, the penalties would range up to \$25,000 for the first offense and up to \$50,000 for any subsequent offense for any person to engage in fishing in violation of regulations adopted pursuant to section 6 of this Act.

Persons who fail to keep the required records and refuse to allow enforcement officers to board and inspect, as provided for in subsections (b) and (c) of this section, would be subject to civil penalties of up to \$1,000 for the first offense and up to \$5,000 for any subsequent offense. Persons violating the import restrictions provided under subsection (d) of this section would be subject to a civil penalty of not more than \$100,000.

In addition, subsection (e) would authorize the Secretary of Commerce to request of the Attorney General and initiate a civil action against any person who failed to pay a penalty assessed by the Secretary.

Subsections (a) and (g) would make all laws relating to the seizure, judicial forfeiture, and condemnation of cargo for violation of the Customs laws applicable to seizures and forfeitures incurred under the provisions of this Act.

## SECTION 8

Section 8(a) of the bill would prescribe enforcement procedures and how they are to be implemented. Paragraphs (1) through (4) would provide the specifics of enforcement of this Act.

Subsection (b) would insure the participation of the United States in international enforcement systems in accordance with paragraph 3 of Article IX of the Convention. Also to implement the international enforcement agreement, this subsection would provide for the arrest and seizure by personnel of other nations party to the convention of persons and vessel under the jurisdiction of the United States violating agreed upon regulations of the Convention. This subsection also would provide that such persons and vessels shall be promptly turned over to an authorized official of the United States.

Subsection (c) would provide that the execution of a warrant of arrest, other process or seizure of any fish shall be stayed by a Marshal or other officer when a bond or stipulation is received from the accused and approved by a judge of the U.S. District Court having jurisdiction over the offense.

## SECTION 9

Section 9, subsection (a) of the bill, would authorize the United States Commissioners, through the Secretary of State and with the concurrence of the agency, institution, or organization concerned, to arrange for the cooperation of agencies of the Federal and State Governments and of private institutions and organizations in carrying out the provisions of Article IV of the Convention. This Article refers to scientific research functions.

Subsection (b) would enlist the cooperation of all agencies of the Federal Government, upon the request of the Commission, in carrying out scientific and other programs and in providing facilities and personnel to assist the Commission in implementation of duties under the Convention.

Subsection (c) would provide that none of the prohibitions deriving from the Act, or those contained in the laws or regulations of any State, shall prevent the Commission from implementing or authorizing both fishing operations and biological experiments for the purposes of scientific investigations or discharging any other duties prescribed by the Convention.

Subsection (d) of the bill, as introduced, provided that nothing in this Act would be construed as diminishing or increasing the jurisdiction of the States within the territorial sea of the United States.

In view of the fact that the Convention covers tunas and other highly migratory fishes which migrate in and out waters within the boundaries of States bordering on the Convention area, it may be necessary to make Federal regulations promulgated pursuant to this Act applicable to fishing within such State's boundaries if that State does not have laws and regulations designed and enforced to fulfill U.S. obligations under the treaty. Subsection (d) provides such authority if certain conditions are met.

As amended, the bill would give the Secretary of Commerce authority to apply Federal regulations to fishing within a coastal State's boundaries if he determines that such State (1) fails to enact, within a reasonable period of time, laws or regulations which implement U.S. accepted Commission recommendations for conservation, or (2) fails to enforce laws and regulations which implement such recom-

mendations. If, after notice by the Secretary of intent to apply Federal regulations within a State's boundaries and that State requests an agency hearing on the record, Federal law is not to apply unless the hearing record supports a determination that the State lacks the requisite laws or regulations or is failing to enforce them.

New subsection (c) would require the Secretary to undertake a continuing review of the laws and regulations of all States to which subsection (e) applies in order to insure its purposes are carried out.

The Committee is cognizant of the immediate conservation needs that exist with regards to bluefin tuna in the Atlantic Ocean. It was because of these needs that ICCAT recommended immediate regulatory measures. Recognizing this need, the Committee supports the language in section 6(d) of the bill requiring the immediate implementation of the ICCAT recommendations for the 1975 bluefin tuna fishing season.

The Committee is also cognizant of the difficulties involved in the States along the Atlantic Coast developing appropriate conservation programs within their territorial waters within the time frame provided by section 9(d)(2) of this legislation.

Consequently, the Committee feels that it would not be objectionable if the provisions of section 9(d)(2) of the bill are waived for the 1975 bluefin tuna season in view of the need to promulgate regulations that would provide immediate protection to bluefin tuna. However, if such a waiver is utilized by the Secretary of Commerce in his discretion, then the Committee would expect all action to declare the bluefin tuna a threatened species under the Endangered Species Act of 1973 to be terminated.

## SECTION 10

Section 10 of this bill would authorize to be appropriated such sums as may be necessary to carry out the provisions of this Act for Fiscal Year 1976, the transition period (beginning July 1, 1976, and ending September 30, 1976), and Fiscal Year 1977.

Included in the measures to be covered under this section would be the necessary travel expenses of the United States Commissioners, Alternate Commissioners, and authorized Advisors in attendance at official meetings. Such expenses allowed would be required to be in accordance with Federal Travel Regulations and related Acts. In addition, the United States share of the joint expenses of the Commission would be included under this provision of the Act.

## SECTION 11

Section 11 of the bill would provide a standard separability clause protecting the applicability and validity of the affected sections of the Act if part of it should ever be ruled to be inapplicable or invalid.

## ESTIMATED COSTS

Pursuant to the requirements of section 252 of the Legislative Reorganization Act of 1970, the Committee estimates that the cost of the proposed legislation is as follows:

	Fiscal year		
	1976	Transitional quarter	1977
Cost.....	\$640,000	\$160,000	\$640,000

These cost figures reflect the costs likely to be incurred by the Departments of Commerce and State. No cost estimate was received from the Department of Transportation, in which the Coast Guard is operating, with respect to its responsibilities under this proposed bill.

#### CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

#### AGENCY COMMENTS

U.S. DEPARTMENT OF COMMERCE,  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION,  
Rockville, Md., June 20, 1975.

HON. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: On Monday June 16, 1975, the House of Representatives passed H.R. 5522, a bill to implement the International Convention for the Conservation of Atlantic Tunas. This letter responds to a request from your staff for a NOAA position on that bill.

As you may know, the International Commission for the Conservation of Atlantic Tunas (ICCAT) at the third regular meeting of the ICCAT Council in November 1974, made several recommendations for conservation measures for Atlantic tunas for the 1975 fishing season. It is our hope to be able to put those recommendations into effect as soon as possible. The 1975 fishing season is upon us. Without this bill the only way we will be able to regulate bluefin tuna fishing this season in the Atlantic is to declare the bluefin a threatened species pursuant to the provisions of the Endangered Species Act and regulate fishing activities under that Act.

Consequently, it is our strongest hope that the ICCAT bill could be voted out of your committee at the next executive session and sent to the Senate before the July 4th recess. We believe that the record developed during the House hearings provides ample explanation and support for the bill. The Administration is on Record as supporting the bill. The fishing industry and the conservation community also have supported the bill as an urgently needed piece of legislation.

However, we feel that section 9(d), as amended by the House Committee, presents a problem to the Administration. To be completely effective the ICCTA recommendations must apply throughout the entire range of the bluefin tuna including the territorial sea of the United States. We would, of course, accept appropriate regulation by the States within the 3 mile limit. However, where the States do not act, or their actions do not adequately implement the ICCAT recommendations, the Federal Government must be able to act promptly in the interim. The requirement in section 9(d)(2) for a Secretarial determination "on the record after opportunity for agency hearing" and the requirement that the Secretary refrain from acting for a "reasonable time" would make it impossible for him to act promptly to conserve the bluefin tuna resource in cases where action on his part becomes necessary. We therefore urge deletion of the phrase "on the record after opportunity for agency hearing" from subsection 9(d)(2) and the phrase "within a reasonable time" from subsection 9(d)(2)(A).

If you have any questions or need anything more to justify the action we seek, please feel free to call upon us.

Sincerely,

ROBERT M. WHITE,  
Administrator.

DEPARTMENT OF STATE,  
Washington, D.C., May 14, 1975.

HON. NELSON A. ROCKEFELLER,  
President of the Senate.

DEAR MR. PRESIDENT: There is enclosed a draft of a proposed bill, "To give effect to the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro May 14, 1966, by the United States of America and Other Countries, and for other purposes". We recommend that it be enacted as soon as possible.

The International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro May 14, 1966, and hereinafter referred to as "the Convention", entered into force March 21, 1969, after being ratified or adhered to by seven countries, including the United States. The countries now party to the Convention are Brazil, Canada, Cuba, France, Ghana, Ivory Coast, Japan, Korea, Morocco, Portugal, Senegal, South Africa, Spain and the United States. The Dominican Republic, Gabon and Venezuela have signed the Convention but have not yet ratified it. The Convention remains open to adherence by any Government which is a member of the United Nations or of any of its specialized agencies.

The Convention was a response to the rapidly increasing exploitation of Atlantic Ocean tuna resources by fishermen of a large number of nations of Europe, Africa, the Americas and Asia. It reflects the conviction of the fishery experts of those nations that there is danger of overfishing and a decline in the productivity of the stocks of tunas and tuna-like fishes unless an effective program of international cooperation in research and conservation is implemented.

The Convention establishes an International Commission for Conservation of the Atlantic Tunas to coordinate, and if necessary carry out, scientific research on the Atlantic tunas and recommend joint measures to maintain the populations at levels which will permit the maximum sustainable catch. The Convention obliges the Contracting Parties to be represented by Delegates on the Commission, to furnish statistical and biological information for the Commission's use, to apply the duly adopted recommendations of the Commission, and to take necessary action to enforce the Convention, including collaboration in setting up an international enforcement system. The Commission held its first meeting in 1969, and made its first regulatory recommendations in 1972.

Although the United States has ratified the Convention, new legislation is required to carry out its provisions. In addition to authorization for appointment of Commissioners to represent it on the Commission and authorization for the Commissioners to appoint an advisory committee, legislation is required to receive and accept or object to conservation recommendations made by the Commission under the Convention, promulgate and enforce such regulations as may be necessary to ensure compliance by U.S. fishermen with the

duly accepted conservation measures recommended by the Commission, and cooperate in carrying out the scientific and other programs of the Commission. The proposed bill provides the specific legislative authority needed for the discharge of these treaty obligations by the United States. Many of these provisions are substantially similar to like provisions in other statutes implementing fishery agreements, such as the Northwest Atlantic Fisheries Act of 1950, as amended, and the Tuna Conventions Act of 1950, as amended.

We hope that every effort will be made to enact this legislation as soon as possible. The United States has now accepted ICCAT regulatory measures (1) prohibiting the landing of yellowfin tuna less than 3.2 kilograms, (2) prohibiting the landing of Atlantic bluefin tuna less than 6.4 kilograms, and (3) limiting the fishing mortality of Atlantic bluefin tuna to recent levels for a period of 1 year. As it now stands, there is no federal authority to enforce these measures with respect to United States fishermen. Delay in the enactment of implementing legislation could have adverse consequences for some Atlantic tuna resources and would be detrimental to the credibility of the United States position at the 1975 ICCAT meeting.

Section 1 of the bill gives a short title for the proposed legislation.

Section 2 defines certain terms used in the bill.

Section 3 authorizes the President to appoint three Commissioners, the maximum number of representatives permitted each country by the Convention, stipulates that they shall receive no compensation for their services, and establishes certain criteria for their selection to ensure that they will be representative of the interested public and Government sectors.

Section 4 authorizes the Commissioners to appoint an advisory committee of from five to twenty persons representative of the various groups concerned with Atlantic tuna fisheries. The rights and functions of the advisers are prescribed and are similar to those of members of similar advisory committees provided by statute for other international fishery commissions.

Subsection 5(a) authorizes the Secretary of State, on behalf of the United States, to receive and deal appropriately with communications from the Commission, with the concurrence of the Secretary of Commerce and, with respect to enforcement, the concurrence of the Secretary of the Department of Transportation. The purpose of the procedure authorized is to ensure that conservation measures recommended by the Commission shall not be applied to U.S. fishermen if their rejection by another Contracting Party or other Parties would make their application ineffective for accomplishing the purposes of the Convention.

Subsection 5(b) authorizes the Secretary of State, in consultation with the Secretary of Commerce and the Secretary of the Department in which the Coast Guard is operating, to enter into international agreements for the purpose of implementing regulations binding on the Parties. Such agreements may include enforcement which could involve inspection of U.S. vessels and catches by foreign enforcement officers as well as by U.S. enforcement officers. This provision relates specifically to Article IX, paragraph 3 of the Convention, which calls for international collaboration for the implementation and enforcement of Convention provisions.

Subsection 6(a) prescribes the procedures for promulgation of regulations by the Secretary of Commerce for the purpose of carrying out recommendations of the Commission that are effective for the United States. This subsection also empowers the Secretary of Commerce to designate officers and employees of the States and the Commonwealth of Puerto Rico and authorize them to function as Federal law enforcement agents for the purpose of carrying out enforcement activities under the Act. The enforcement activities of such State officers in regard to foreign flag vessels will be limited to the fisheries zone. Subsection 6(c) places enforcement responsibility primarily with the Coast Guard, and authorizes regulations for procedures and methods of enforcement. Subsection 6(d) provides for the publication of proposed regulations in the Federal Register and affords interested persons the opportunity to participate in the rulemaking. Such regulations when published shall be accompanied by a statement assessing the nature and effectiveness of the measures for the implementation of the measures for the implementation of the Commission's recommendations which are being carried out by other countries fishing the species subject to such recommendations. After publication such regulations would be applicable to U.S. fishermen, but shall be suspended if it is determined that a member country of the Commission for whom the conservation regulations are effective is fishing in such a way as to constitute a serious threat to the achievement of the Commission's recommendations. The kinds of regulations which may be promulgated are described, and import embargo provisions are contained which are similar to those of the Tuna Conventions Act of 1950. These provisions are intended to prohibit the entry of fish under regulation by the Commission taken in such a way as would tend to diminish the effectiveness of the Conservation recommendations of the Commission.

Subsection 7(a) makes it unlawful for any person in charge of a fishing vessel or any fishing vessel subject to the jurisdiction of the United States to fish in violation of any regulation adopted pursuant to this Act or for any person to deal in or be in possession of fish which he knows have been taken in violation of such regulations.

Subsections 7(b) and 7(c) make it unlawful for persons aboard any fishing vessel of the United States to fail to keep records and make reports required by regulations adopted pursuant to this Act or to refuse to stop and show such records, catch, equipment to a duly authorized official and permit interrogation of persons on board the vessel.

Subsection (d) makes it unlawful for any person to import fish which have been denied entry into the United States in accordance with the provisions of Section 6(c) of this Act.

Subsections 7(e) and 7(f) prescribe maximum fines of \$25,000 for a first violation and \$50,000 for a subsequent violation of subsection (a), and \$1,000 for a first violation and \$5,000 for a subsequent violation of subsections (b) or (c). Subsection 7(g) prescribes a maximum fine of \$100,000 for any violation of subsection (d). Subsection 7(h) provides that all fish taken or retained in violation of subsection (a) or the monetary value of such fish may be forfeited, and makes all provisions of law relating to seizure, judicial forfeiture and condemnation of a cargo for violation of the customs law applicable to seizures and forfeitures under the provisions of this Act.

Subsection 8(a) prescribes how enforcement shall be carried out. It states that any person authorized to carry out enforcement activities under the Act may board and inspect any vessel and its catch in the waters of the Convention area; arrest, with or without a warrant, any person who violates the provisions of the Act or regulations issued thereunder; execute warrants and processes; and seize any fish found aboard a vessel in violation of the Act or regulations issued under the Act. Subsection 8(b) provides authority for duly authorized officials of either the United States or another Contracting Party to carry out enforcement activities with respect to persons or vessels subject to the jurisdiction of the other party to the extent authorized under the Convention or by agreements concluded pursuant to subsection 5(b). This provision insures that the United States can participate in systems of international enforcement established in accord with Article IX, paragraph 3, of the Convention provisions. The subsection also specifies that where any international enforcement agreement provides for arrest of persons or vessels under United States jurisdiction it shall also provide that the person or vessel arrested shall be promptly handed over to an authorized United States official. Subsection 8(c) provides that execution of any warrant or process or seizure of any fish under the provisions of the Act shall be stayed upon posting of a sufficient bond by the accused.

Subsection 9(a) authorizes the United States Commissioners, through the Secretary of State, to arrange for the cooperation of agencies of Federal, State and private institutions and organizations in carrying out the research function of the Commission under Article IV of the Convention. Subsection 9(b) authorizes all agencies of the Federal Government to cooperate in scientific and other programs upon request of the Commission. Subsection 9(c) provides that none of the prohibitions deriving from the Act, or those contained in the laws or regulations of any State, shall prevent the Commission from carrying out or authorizing fishing operations and biological experiments for purposes of its scientific investigations or discharging any other duties prescribed by the Convention. Subsection 9(d) states that the Act does not alter the existing rights of the several States within the territorial sea.

Section 10 authorizes appropriation of the sums necessary for carrying out the purposes and provisions of the Act, including necessary travel expenses of the Commissioners and authorized advisors as well as the United States share of the joint expenses of the Commission, as provided in Article X of the Convention.

Section 11 is a standard separability clause.

The Office of Management and Budget has advised that there is no objection to the presentation of the proposed legislation from the standpoint of the Administration's program.

Sincerely,

ROBERT J. McCLOSKEY,  
Assistant Secretary for Congressional Relations.



*Signed 8/5/75*  
*94-70*

# Ninety-fourth Congress of the United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Tuesday, the fourteenth day of January,  
one thousand nine hundred and seventy-five*

## An Act

To give effect to the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro May 14, 1966, by the United States of America and other countries, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Atlantic Tunas Convention Act of 1975".*

### DEFINITIONS

SEC. 2. For the purpose of this Act—

(1) The term "Convention" means the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro May 14, 1966, including any amendments or protocols which are or become effective for the United States.

(2) The term "Commission" means the International Commission for the Conservation of Atlantic Tunas provided for in article III of the Convention.

(3) The term "Council" means the Council established within the International Commission for the Conservation of Atlantic Tunas pursuant to article V of the Convention.

(4) The term "fisheries zone" means the entire zone established by the United States under the Act of October 14, 1966 (80 Stat. 908; 16 U.S.C. 1091-1094), or similar zones established by other parties to the Convention to the extent that such zones are recognized by the United States.

(5) The term "~~fishery~~" means the catching, taking, or fishing for, or the attempted catching, taking, or fishing for any species of fish covered by the Convention, or any activities in support thereof.

(6) The term "fishing vessel" means any vessel engaged in catching fish or processing or transporting fish loaded on the high seas, or any vessel outfitted for such activities.

(7) The term "Panel" means any panel established by the Commission pursuant to article VI of the Convention.

(8) The term "person" means every individual, partnership, corporation, and association subject to the jurisdiction of the United States.

(9) The term "Secretary" means the Secretary of Commerce.

(10) The term "State" includes each of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

### COMMISSIONERS

SEC. 3. (a) The United States shall be represented by not more than three Commissioners who shall serve as delegates of the United States on the Commission, and who may serve on the Council and Panels of the Commission as provided for in the Convention. Such Commissioners shall be appointed by and serve at the pleasure of the President.



Not more than one such Commissioner shall be a salaried employee of any State or political subdivision thereof, or the Federal Government. The Commissioners shall be entitled to select a Chairman and to adopt such rules of procedure as they find necessary.

(b) The Secretary of State, in consultation with the Secretary, may designate from time to time and for periods of time deemed appropriate Alternate United States Commissioners to the Commission. Any Alternate United States Commissioner may exercise at any meeting of the Commission, Council, any Panel, or the advisory committee established pursuant to section 4 of this Act, all powers and duties of a United States Commissioner in the absence of any Commissioner appointed pursuant to subsection (a) of this section for whatever reason. The number of such Alternate United States Commissioners that may be designated for any such meeting shall be limited to the number of United States Commissioners appointed pursuant to subsection (a) of this section who will not be present at such meeting.

(c) The United States Commissioners or Alternate Commissioners, although officers of the United States while so serving, shall receive no compensation for their services as such Commissioners or Alternate Commissioners.

ADVISORY COMMITTEE

SEC. 4. The United States Commissioners shall appoint an advisory committee which shall be composed of not less than five nor more than twenty individuals who shall be selected from the various groups concerned with the fisheries covered by the Convention. Each member of the advisory committee shall serve for a term of two years and be eligible for reappointment. Members of the advisory committee may attend all public meetings of the Commission, Council, or any Panel and any other meetings to which they are invited by the Commission, Council, or any Panel. The advisory committee shall be invited to attend all nonexecutive meetings of the United States Commissioners and at such meetings shall be given opportunity to examine and to be heard on all proposed programs of investigation, reports, recommendations, and regulations of the Commission. ~~Members~~ of the advisory committee shall receive no compensation for their services as such members. On approval by the United States Commissioners—

(1) if not more than three members of the advisory committee are designated by the committee to attend any meeting of the Commission, Council, or advisory committee, or of any Panel, each of such members shall be paid for his actual transportation expenses and per diem incident to his attendance; and

(2) in any case in which more than three members are designated by the advisory committee to attend any such meeting, each such member to whom paragraph (1) does not apply may be paid for his actual transportation expenses and per diem incident to his attendance.

SECRETARY OF STATE TO ACT FOR THE UNITED STATES

SEC. 5. (a) The Secretary of State is authorized to receive on behalf of the United States, reports, requests, and other communications of the Commission, and to act thereon directly or by reference to the appropriate authorities. The Secretary of State, with the concurrence of the Secretary and, for matters relating to enforcement, the Secretary of the department in which the Coast Guard is operating, is authorized to take appropriate action on behalf of the United States

with regard to recommendations received from the Commission pursuant to article VIII of the Convention. The Secretary and, when appropriate, the Secretary of the department in which the Coast Guard is operating, shall inform the Secretary of State as to what action he considers appropriate within five months of the date of the notification of the recommendation from the Commission, and again within forty-five days of the additional sixty-day period provided by the Convention if any objection is presented by another contracting party to the Convention, or within thirty days of the date of the notification of an objection made within the additional sixty-day period, whichever date shall be the later. After any notification from the Commission that an objection of the United States is to be considered as having no effect, the Secretary shall inform the Secretary of State as to what action he considers appropriate within forty-five days of the sixty-day period provided by the Convention for reaffirming objections. The Secretary of State shall take steps under the Convention to insure that a recommendation pursuant to article VIII of the Convention does not become effective for the United States prior to its becoming effective for all contracting parties conducting fisheries affected by such recommendation on a meaningful scale in terms of their effect upon the success of the conservation program, unless he determines, with the concurrence of the Secretary, and, for matters relating to enforcement, the Secretary of the department in which the Coast Guard is operating, that the purposes of the Convention would be served by allowing a recommendation to take effect for the United States at some earlier time.

(b) The Secretary of State, in consultation with the Secretary and the Secretary of the department in which the Coast Guard is operating, is authorized to enter into agreements with any contracting party, pursuant to paragraph 3 of article IX of the Convention, relating to cooperative enforcement of the provisions of the Convention, recommendations in force for the United States and such party or parties under the Convention, and regulations adopted by the United States and such contracting party or parties pursuant to recommendations of the Commission. Such agreements may authorize personnel of the United States to enforce measures under the Convention and under regulations of another party with respect to persons under that party's jurisdiction, and may authorize personnel of another party to enforce measures under the Convention and under United States regulations with respect to persons subject to the jurisdiction of the United States. Enforcement under such an agreement may not take place within the territorial seas or fisheries zone of the United States. Such agreements shall not subject persons or vessels under the jurisdiction of the United States to prosecution or assessment of penalties by any court or tribunal of a foreign country.

#### ADMINISTRATION

SEC. 6. (a) The Secretary is authorized and directed to administer and enforce all of the provisions of the Convention, this Act, and regulations issued pursuant thereto, except to the extent otherwise provided for in this Act. In carrying out such functions the Secretary is authorized and directed to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and this Act, and with the concurrence of the Secretary of State, he may cooperate with the duly authorized officials of the government of any party to the Convention. In addition, the Secretary may utilize,

with the concurrence of the Secretary of the department in which the Coast Guard is operating insofar as such utilization involves enforcement at sea, with or without reimbursement and by agreement with any other Federal department or agency, or with any agency of any State, the personnel, services, and facilities of that agency for enforcement purposes with respect to any vessel in the fisheries zone, or wherever found, with respect to any vessel documented under the laws of the United States, and any vessel numbered or otherwise licensed under the laws of any State. When so utilized, such personnel of the States of the United States are authorized to function as Federal law enforcement agents for these purposes, but they shall not be held and considered as employees of the United States for the purposes of any laws administered by the Civil Service Commission.

(b) Enforcement activities at sea under the provisions of this Act for fishing vessels subject to the jurisdiction of the United States shall be primarily the responsibility of the Secretary of the department in which the Coast Guard is operating, in cooperation with the Secretary and the United States Customs Service. The Secretary after consultation with the Secretary of the department in which the Coast Guard is operating, shall adopt such regulations as may be necessary to provide for procedures and methods of enforcement pursuant to article IX of the Convention.

(c) (1) Upon favorable action by the Secretary of State under section 5(a) of this Act on any recommendation of the Commission made pursuant to article VIII of the Convention, the Secretary shall promulgate, pursuant to this subsection, such regulations as may be necessary and appropriate to carry out such recommendation.

(2) To promulgate regulations referred to in paragraph (1) of this subsection, the Secretary shall publish in the Federal Register a general notice of proposed rulemaking and shall afford interested persons an opportunity to participate in the rulemaking through (A) submission of written data, views, or arguments, and (B) oral presentation at a public hearing. Such regulations shall be published in the Federal Register and shall be accompanied by a statement of the considerations involved in the issuance of the regulations, and by a statement, based on inquiries and investigations, assessing the nature and effectiveness of the measures for the implementation of the Commission's recommendations which are being or will be carried out by countries whose vessels engage in fishing the species subject to such recommendations within the waters to which the Convention applies. After publication in the Federal Register, such regulations shall be applicable to all vessels and persons subject to the jurisdiction of the United States on such date as the Secretary shall prescribe. The Secretary shall suspend at any time the application of any such regulation when, after consultation with the Secretary of State and the United States Commissioners, he determines that fishing operations in the Convention area of a contracting party for whom the regulations are effective are such as to constitute a serious threat to the achievement of the Commission's recommendations.

(3) The regulations required to be promulgated under paragraph (1) of this subsection may—

- (A) select for regulation one or more of the species covered by the Convention;
- (B) divide the Convention waters into areas;
- (C) establish one or more open or closed seasons as to each such area;

(D) limit the size of the fish and quantity of the catch which may be taken from each area within any season during which fishing is allowed;

(E) limit or prohibit the incidental catch of a regulated species which may be retained, taken, possessed, or landed by vessels or persons fishing for other species of fish;

(F) require records of operations to be kept by any master or other person in charge of any fishing vessel;

(G) require such clearance certificates for vessels as may be necessary to carry out the purposes of the Convention and this Act;

(H) require proof satisfactory to the Secretary that any fish subject to regulation pursuant to a recommendation of the Commission offered for entry into the United States has not been taken or retained contrary to the recommendations of the Commission made pursuant to article VIII of the Convention which have been adopted as regulations pursuant to this section; and

(I) impose such other requirements and provide for such other measures as the Secretary may deem necessary to implement any recommendation of the Commission.

(4) Upon the promulgation of regulations provided for in paragraph (3) of this subsection, the Secretary shall promulgate, with the concurrence of the Secretary of State and pursuant to the procedures prescribed in paragraph (2) of this subsection, additional regulations which shall become effective simultaneously with the application of the regulations provided for in paragraph (3) of this subsection, which prohibit—

(A) the entry into the United States of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the Convention area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission; and

(B) the entry into the United States, from any country when the vessels of such country are being used in the conduct of fishing operations in the Convention area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the Convention area.

(5) In the case of repeated and flagrant fishing operations in the Convention area by the vessels of any country which seriously threaten the achievement of the objectives of the Commission's recommendations, the Secretary with the concurrence of the Secretary of State, may by regulations promulgated pursuant to paragraph (2) of this subsection prohibit the entry in any form from such country of other species covered by the Convention as may be under investigation by the Commission and which were taken in the Convention area. Any such prohibition shall continue until the Secretary is satisfied that the condition warranting the prohibition no longer exists, except that all fish in any form of the species under regulation which were previously prohibited from entry shall continue to be prohibited from entry.

(d)(1) Notwithstanding section 5(a) and subsection (c) of this section, the recommendations of the Commission concerning bluefin tuna (*Thunnus thynnus thynnus*) which were proposed at the third

regular meeting of the Council during the period beginning November 20 and ending November 26, 1974, shall apply with respect to persons and vessels subject to the jurisdiction of the United States immediately upon the taking effect of the regulations required to be promulgated under paragraph (2) of this subsection.

(2) Not later than the thirtieth day after the date of enactment of this Act, the Secretary shall promulgate such regulations as may be necessary and appropriate to carry out the purposes of paragraph (1) of this subsection, including, after consultation with the Secretary of the department in which the Coast Guard is operating, regulations providing procedures and methods of enforcement. Notwithstanding provisions of section 553 of title 5 of the United States Code, such regulations may be promulgated without general notice of proposed rulemaking, and such regulations may take effect on the date they are published in the Federal Register. Such regulations shall remain in force and effect with respect to persons and vessels subject to the jurisdiction of the United States until the last date on which the recommendations referred to in paragraph (1) can take effect under paragraph (3) of article VIII of the Convention, and if such recommendations do take effect under the Convention with respect to the United States on or before such last date, such regulations shall remain in force and effect, subject to the provisions of the Convention and this Act, for so long as such recommendations are so in effect.

VIOLATIONS; FINES AND FORFEITURES; APPLICATION OF RELATED LAWS

SEC. 7. (a) It shall be unlawful—

(1) for any person in charge of a fishing vessel or any fishing vessel subject to the jurisdiction of the United States to engage in fishing in violation of any regulation adopted pursuant to section 6 of this Act; or

(2) for any person subject to the jurisdiction of the United States to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish which he knows, or should have known, were taken or retained contrary to the recommendations of the Commission made pursuant to article VIII of the Convention and adopted as regulations pursuant to section 6 of this Act, without regard to the citizenship of the person or vessel which took the fish.

(b) It shall be unlawful for the master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to fail to make, keep, or furnish any catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this Act to be made, kept, or furnished by such master or person.

(c) It shall be unlawful for the master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to refuse to permit any person authorized to enforce the provisions of this Act and any regulations adopted pursuant thereto, to board such vessel and inspect its catch, equipment, books, documents, records, or other articles or question the persons onboard in accordance with the provisions of this Act, or the Convention, as the case may be, or to obstruct such officials in the execution of such duties.

(d) It shall be unlawful for any person to import, in violation of any regulation adopted pursuant to section 6(c) or (d) of this Act, from any country, any fish in any form of those species subject to regulation pursuant to a recommendation of the Commission, or any fish in any form not under regulation but under investigation by the

Commission, during the period such fish have been denied entry in accordance with the provisions of section 6 (c) or (d) of this Act. In the case of any fish as described in this subsection offered for entry in the United States, the Secretary shall require proof satisfactory to him that such fish is not ineligible for such entry under the terms of section 6 (c) or (d) of this Act.

(e) (1) Any person who—

(A) violates any provision of subsection (a) of this section shall be assessed a civil penalty of not more than \$25,000, and for any subsequent violation of such subsection (a) shall be assessed a civil penalty of not more than \$50,000;

(B) violates any provision of subsection (b) or (c) of this section shall be assessed a civil penalty of not more than \$1,000, and for any subsequent violation of such subsection (b) or (c) shall be assessed a civil penalty of not more than \$5,000; or

(C) violates any provision of subsection (d) of this section shall be assessed a civil penalty of not more than \$100,000.

(2) The Secretary is responsible for the assessment of the civil penalties provided for in paragraph (1). The Secretary may remit or mitigate any civil penalty assessed by him under this subsection for good cause shown.

(3) No penalty shall be assessed under this subsection unless the person accused of committing any violation is given notice and opportunity for a hearing with respect to such violation.

(4) Upon any failure of any person to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action.

(f) All fish taken or retained in violation of subsection (a) of this section, or the monetary value thereof, may be forfeited.

(g) All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a cargo for violation of the customs laws, the disposition of such cargo or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act.

#### ENFORCEMENT

SEC. 8. (a) Any person authorized in accordance with the provisions of this Act to enforce the provisions of this Act and the regulations issued thereunder may—

(1) with or without a warrant, board any vessel subject to the jurisdiction of the United States and inspect such vessel and its catch and, if as a result of such inspection, he has reasonable cause to believe that such vessel or any person on board is engaging in operations in violation of this Act or any regulations issued thereunder, he may, with or without a warrant or other process, arrest such person;

(2) arrest, with or without a warrant, any person who violates the provisions of this Act or any regulation issued thereunder in his presence or view;

(3) execute any warrant or other process issued by an officer or court of competent jurisdiction; and

(4) seize, whenever and wherever lawfully found, all fish taken or retained by a vessel subject to the jurisdiction of the United States in violation of the provisions of this Act or any regulations issued pursuant thereto. Any fish so seized may be disposed of pursuant to an order of a court of competent jurisdiction, or, if perishable, in a manner prescribed by regulation of the Secretary.

(b) To the extent authorized under the convention or by agreements between the United States and any contracting party concluded pursuant to section 5(b) of this Act for international enforcement, the duly authorized officials of such party shall have the authority to carry out the enforcement activities specified in section 8(a) of this Act with respect to persons or vessels subject to the jurisdiction of the United States, and the officials of the United States authorized pursuant to this section shall have the authority to carry out the enforcement activities specified in section 8(a) of this Act with respect to persons or vessels subject to the jurisdiction of such party, except that where any agreement provides for arrest or seizure of persons or vessels under United States jurisdiction it shall also provide that the person or vessel arrested or seized shall be promptly handed over to a United States enforcement officer or another authorized United States official.

(c) Notwithstanding the provisions of section 2464 of title 28, United States Code, when a warrant of arrest or other process in rem is issued in any cause under this section, the marshal or other officer shall stay the execution of such process, or discharge any fish seized if the process has been levied, on receiving from the claimant of the fish a bond or stipulation for the value of the property with sufficient surety to be approved by a judge of the district court having jurisdiction of the offense, conditioned to deliver the fish seized, if condemned, without impairment in value or, in the discretion of the court, to pay its equivalent value in money or otherwise to answer the decree of the court in such cause. Such bond or stipulation shall be returned to the court and judgment thereon against both the principal and sureties may be recovered in event of any breach of the conditions thereof as determined by the court. In the discretion of the accused, and subject to the direction of the court, the fish may be sold for not less than its reasonable market value at the time of seizure and the proceeds of such sale placed in the registry of the court pending judgment in the case.

COOPERATION: COMMISSION'S FUNCTIONS NOT RESTRAINED BY THIS  
ACT OR STATE LAWS

Sec. 9. (a) The United States Commissioners, through the Secretary of State and with the concurrence of the agency, institution, or organization concerned, may arrange for the cooperation of agencies of the United States Government, and of State and private institutions and organizations in carrying out the provisions of article IV of the Convention.



(b) All agencies of the Federal Government are authorized, upon the request of the Commission, to cooperate in the conduct of scientific and other programs, and to furnish facilities and personnel for the purpose of assisting the Commission in carrying out its duties under the Convention.

(c) None of the prohibitions deriving from this Act, or contained in the laws or regulations of any State, shall prevent the Commission from conducting or authorizing the conduct of fishing operations and biological experiments at any time for purposes of scientific investigation, or shall prevent the Commission from discharging any other duties prescribed by the Convention.

(d) (1) Except as provided in paragraph (2) of this subsection, nothing in this Act shall be construed so as to diminish or to increase the jurisdiction of any State in the territorial sea of the United States.

(2) In the event a State does not request a formal hearing and after notice by the Secretary, the regulations promulgated pursuant to this Act to implement recommendations of the Commission shall apply within the boundaries of any State bordering on any Convention area if the Secretary determines that any such State—

(A) has not, within a reasonable period of time after the promulgation of regulations pursuant to this Act, enacted laws or promulgated regulations which implement any such recommendation of the Commission within the boundaries of such State; or

(B) has enacted laws or promulgated regulations which (i) are less restrictive than the regulations promulgated pursuant to this Act, or (ii) are not effectively enforced.

If a State requests the opportunity for an agency hearing on the record, the Secretary shall not apply regulations promulgated pursuant to this Act within that State's boundaries unless the hearing record supports a determination under paragraph (A) or (B). Such regulations shall apply until the Secretary determines that the State is effectively enforcing within its boundaries measures which are not less restrictive than such regulations.

(e) To insure that the purposes of subsection (d) are carried out, the Secretary shall undertake a continuing review of the laws and regulations of all States to which subsection (d) applies or may apply and the extent to which such laws and regulations are enforced.

#### APPROPRIATIONS

SEC. 10. There are authorized to be appropriated out of any moneys in the Treasury not otherwise appropriated, for fiscal year 1976, the period beginning July 1, 1976, and ending September 30, 1976, and fiscal year 1977 such sums as may be necessary for carrying out the purposes and provisions of this Act, including—

(1) necessary travel expenses of the United States Commissioners, Alternate United States Commissioners, and authorized advisors in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code; and

(2) the United States share of the joint expenses of the Commission as provided in article X of the convention.

H. R. 5522—10

SEPARABILITY

Sec. 11. If any provision of this Act or the application of such provision to any circumstance or persons shall be held invalid, the validity of the remainder of the Act and the applicability of such provision to other circumstances or persons shall not be affected thereby.

*Speaker of the House of Representatives.*

*Vice President of the United States and  
President of the Senate.*

July 25, 1975

Dear Mr. Director:

The following bills were received at the White House on July 25th:

- S. 555 ✓✓
- H.R. 5447 ✓✓
- H.R. 5522 ✓✓
- H.R. 7767 ✓

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder  
Chief Executive Clerk

The Honorable James T. Lynn  
Director  
Office of Management and Budget  
Washington, D. C.