

**Calendar No. 405**

114TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
114-233 }

NORTH PACIFIC FISHERIES CONVENTION  
IMPLEMENTATION ACT

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R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 1335



MARCH 28, 2016.—Ordered to be printed  
Filed, under authority of the order of the Senate of March 17, 2016

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

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### NORTH PACIFIC FISHERIES CONVENTION IMPLEMENTATION ACT

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Mr. THUNE, from the Committee on Commerce, Science, and  
Transportation, submitted the following

### R E P O R T

[To accompany S. 1335]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1335) to implement the Convention on the Conservation and Management of the High Seas Fisheries Resources in the North Pacific Ocean, as adopted at Tokyo on February 24, 2012, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE OF THE BILL

The purpose of S. 1335, the North Pacific Fisheries Convention Implementation Act, is to implement the Convention on the Conservation and Management of the High Seas Fisheries Resources in the North Pacific Ocean, as adopted at Tokyo on February 24, 2012, and for other purposes.

#### BACKGROUND AND NEEDS

Many fish stocks around the world have become depleted in the last several decades as a result of fleet overcapacity, overfishing, and ineffective fisheries law enforcement regimes. Coastal fishing nations are responsible for managing the stocks that fall within their domestic waters, which extend 200 miles from their coastline, also known as their exclusive economic zone (EEZ). Unfortunately, many of these coastal nations do not manage for stock sustain-

ability, enforce their regulations effectively, or coordinate management of shared stocks with other fishing nations.

Under the Magnuson-Stevens Fishery Conservation and Management Act (MSA),<sup>1</sup> the U.S. Government exercises jurisdiction over the management of commercial fisheries within the U.S. EEZ. The MSA authorizes the Secretary of Commerce, through the National Marine Fisheries Service (NMFS) within the National Oceanic and Atmospheric Administration (NOAA), to be responsible for the management of living marine resources. The MSA authorizes Regional Fishery Management Councils to develop management plans, subject to the Secretary of Commerce's approval, that follow the MSA's requirements for rebuilding overfished stocks and setting harvest levels according to science-based catch limits.

Sustainable fisheries management which occurs on the high seas or under the jurisdiction of multiple nations can be difficult due to the vast areas of ocean that must be monitored, limited enforcement resources, and high volumes of operating fishing vessels. The coordinated management of shared stocks harvested beyond 200 miles is accomplished by nations participating in Regional Fisheries Management Organizations (RFMOs), which are international commissions established by multilateral agreements to guide and coordinate the fisheries management activities of multiple nations that target common stocks in specific regions. Each nation that chooses to participate in RFMOs retains its sovereignty, yet is expected to develop domestic fisheries laws and regulations consistent with each agreement. The United States follows this practice and seeks to implement legislation and regulations to meet its commitments under RFMOs and international fisheries agreements. Short of such an agreement or implementing legislation, U.S. fisheries managers seek discussions with foreign counterparts to address concerns on interjurisdictional stock management. In 2004, the United Nations General Assembly unanimously adopted Resolution 59/25, which calls for nations to cooperate in the establishment of new RFMOs for areas and resources where no such relevant organization or arrangement exists.<sup>2</sup> Since that time, a number of new RFMOs have been formed by international agreement.

All U.S. international fishery enforcement activities are coordinated closely between the U.S. Coast Guard (USCG), NMFS, and the State Department. NMFS and the USCG also provide input for the State Department's negotiations of fishery treaties and agreements, in addition to reviewing foreign fishing vessel permit applications. The USCG conducts international fisheries enforcement patrols and investigations as part of its 11 statutory missions in close coordination with the State Department, as required by Presidential Directive 27.<sup>3</sup> Additionally, NMFS and the USCG cooperate closely with individual U.S. States and territories, and coordinate MSA enforcement in and adjacent to State and territorial waters.

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<sup>1</sup> 16 U.S.C. 1801 et seq.

<sup>2</sup> Resolution 59/25, adopted by the General Assembly on 17 November 2004 (<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/477/70/PDF/N0447770.pdf?OpenElement>).

<sup>3</sup> Presidential Directive 27, National Security Council "Procedures for dealing with Non-Military Incidents" January 19, 1978.

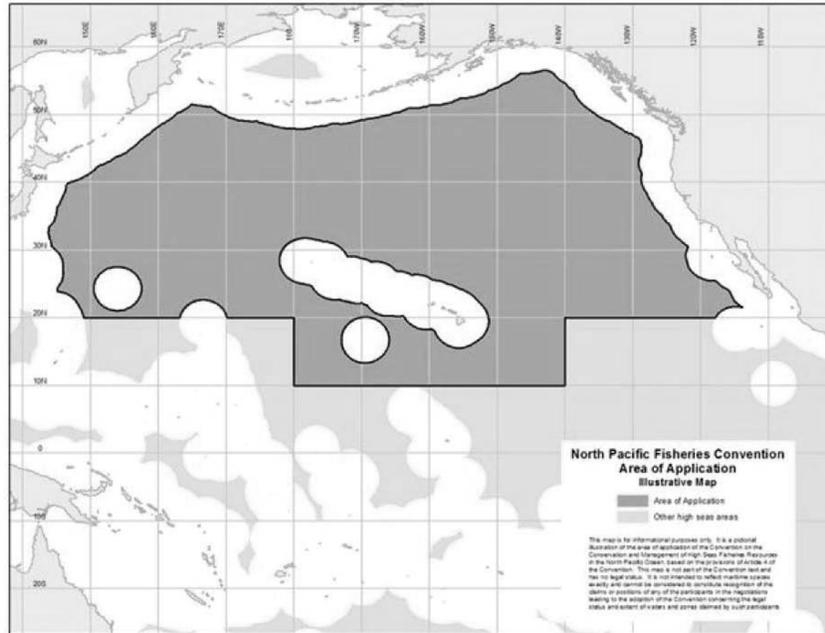
### **The North Pacific Fisheries Convention**

In response to growing international concern over the negative impact of certain high seas bottom fishing activities, delegations from the United States, Japan, South Korea, and Russia met in Tokyo, Japan in August 2006 to begin negotiations on an agreement to address deep sea fishing practices occurring outside areas of national jurisdiction on sea mounts, hydrothermal vents, deep sea and cold water coral communities, sponge fields, and other unique and endemic deep-sea marine ecosystems collectively referred to as vulnerable marine ecosystems. With U.S. encouragement, these discussions grew in scope to include not only bottom fisheries but pelagic fish stocks not otherwise subject to international management. The negotiations culminated on February 24, 2012, with the adoption of the Convention on the Conservation and Management of the High Seas Fisheries Resources in the North Pacific Ocean (Convention). Once in force, the Convention will establish the North Pacific Fisheries Commission (Commission), through which parties to the Convention will cooperate to facilitate the long-term and sustainable use of fisheries that are not managed under pre-existing international fisheries management instruments<sup>4</sup> in the area covered by the Convention (Convention Area), which includes areas of the high seas immediately adjacent to the U.S. EEZ off Alaska, the Pacific west coast, Hawaii, and other U.S. territories and possessions in the North Pacific, as shown in Figure 1 below.

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<sup>4</sup>Other RFMOs, such as the Western and Central Pacific Fisheries Commission and the Inter-American Tropical Tuna Commission, already coordinate international management of Highly Migratory Species, such as tunas, in the North Pacific.

Figure 1.



Source: Multilateral meeting on Management of High Seas Fisheries in the North Pacific Ocean:  
<http://nwpbfo.nomaki.jp/img/Map-of-NPFC-Area.jpg>

The United States has played an active and significant role in the development of the Convention and the preparations for its entry into force, which will occur 180 days following the date that a fourth signatory ratifies the Convention. The United States signed the Convention on May 2, 2012, and the Senate provided its advice and consent in favor of ratification on April 3, 2014. When the Committee on Foreign Relations of the Senate reported the Convention favorably on March 13, 2014, with the resolution of advice and consent to ratification, it clarified that the Convention is not self-executing, meaning that ratification requires implementing legislation to conform U.S. domestic law to the requirements of the Convention.<sup>5</sup>

United States accession to the Convention is vital to ensuring that the United States has a strong voice in managing fishing activities outside the U.S. EEZ that could have a direct impact on resources within waters under U.S. jurisdiction. Although U.S. fishermen do not currently fish within the Convention's area of application, U.S. accession will also ensure that U.S. fisherman will have a legitimate right to participate in fisheries within the Convention Area on an equitable basis now and in the future.

<sup>5</sup> U.S. Congress, Senate Committee on Foreign Relations, Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean, report to accompany Treaty Doc. 113-2, 113th Cong., 2nd sess., May 2, 2012, Exec. Rept. 113-3 (<http://www.gpo.gov/fdsys/pkg/CRPT-113erpt3/pdf/CRPT-113erpt3.pdf>).

Canada, China, Japan, South Korea, and Russia have ratified the Convention and it entered into force in July 2015. Because the United States has not yet formally deposited its instrument of ratification, it can only participate in Commission meetings as an observer.

#### SUMMARY OF PROVISIONS

S. 1335, the North Pacific Fisheries Convention Implementation Act, would make changes to domestic law necessary for the implementation of the Convention. The bill would establish the number of Commissioners to represent the United States on the Commission and specify the requirements for appointment and selection. The bill would establish a permanent advisory committee of commercial, indigenous, and scientific individuals and members nominated by the Governors of Alaska, Hawaii, and Washington that would help inform the Commissioner's decisions. The Secretary of Commerce would have primary responsibility for promulgating regulations and developing procedures necessary to carry out the purposes and requirements of the Convention and the Act, with the USCG and NMFS serving as primary enforcement authorities for the requirements of the Act and regulations promulgated thereunder.

S. 1335 would further authorize the Secretary of Commerce to conduct fishing operations and experiments for purposes of scientific investigation, issue fishing permits to U.S. vessels to fish in the Convention's area of jurisdiction, and request and use the services, personnel, and equipment of other Federal agencies, foreign governments, intergovernmental or international organizations, or other agencies for the purposes of the Act. The bill would authorize appropriations at such sums as may be necessary to carry out the Act and to pay the United States' contribution to the Commission, a requirement for parties to the Convention.

#### LEGISLATIVE HISTORY

S. 1335 was introduced by Senators Sullivan and Schatz on May 13, 2015. On May 20, 2015, the Committee met in open Executive Session and, by a voice vote, ordered S. 1335 to be reported favorably, without amendment. A nearly identical bill, S. 2482, passed out of Committee last Congress.

#### ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

#### *S. 1335—North Pacific Fisheries Convention Implementation Act*

S. 1335 would implement the Convention on the Conservation and Management of High Seas Fishery Resources in the North Pacific Ocean (Convention). CBO estimates that implementing the legislation would cost less than \$500,000 a year over the 2016-2020 period, assuming availability of appropriated amounts. Because en-

acting the legislation would not affect direct spending or revenues, pay-as-you-go procedures do not apply.

The Convention that would be implemented under the bill would call for a science-based, precautionary approach to managing fisheries resources in the North Pacific Ocean. The Convention would establish two managing committees to carry out the functions of the Convention, including conducting environmental assessments of fisheries to ensure that no vulnerable marine ecosystems would be harmed if fishing were permitted in those areas. Based on information provided by the National Oceanic and Atmospheric Administration, the U.S. Coast Guard, and the Department of State, CBO estimates that carrying out the new Convention would cost less than \$500,000 a year over the 2016-2020 period. Those funds would be used to cover costs for annual dues, staff time, travel, and programmatic activities.

CBO has not reviewed S. 1335 for intergovernmental or private-sector mandates. Section 4 of the Unfunded Mandates Reform Act excludes from the application of that act any legislative provisions that are necessary for the ratification or implementation of international treaty obligations. CBO has determined that the bill falls within that exclusion.

The CBO staff contacts for this estimate are Jeff LaFave (for federal costs), Jon Sperl (for intergovernmental mandates), and Amy Petz (for private-sector mandates). The estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.

#### REGULATORY IMPACT

Because S. 1335 does not create any new programs, the legislation will have no additional regulatory impact, and will result in no additional reporting requirements. The legislation will have no further effect on the number or types of individuals and businesses regulated, the economic impact of such regulation, the personal privacy of affected individuals, or the paperwork required from such individuals and businesses.

#### CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title.*

This section would designate the short title of this bill as the “North Pacific Fisheries Convention Implementation Act.”

##### *Section 2. Definitions.*

This section would define terms including: “Convention Area” as the waters of the North Pacific Ocean excluding areas of national jurisdiction, high seas areas of the Bering Sea, and high sea areas surrounded by the exclusive economic zone of a single nation, and the exclusive economic zone of the United States or of any other country; “Council” as the Western Pacific Fishery Management

Council, the Pacific Fishery Management Council, or the North Pacific Fishery Management Council; “Exclusive Economic Zone” with respect to the United States, as the zone established by Presidential Proclamation, with respect to a foreign country a similar designated zone; “Fishery Resources” as all fish within the Convention Area including mollusks, crustaceans, and other marine species caught by a fishing vessel within the Convention Area and excluding sedentary species insofar as they are subject to the national jurisdiction of coastal States, catadromous species, marine mammals, marine reptiles, and sea birds; “Fishing Activities” as the actual or attempted searching for, catching, taking, harvesting, or processing of fishery resources and transshipments of fish; “Fishing Vessel” as any vessel used or intended for use for or in support of the purpose of fishing; “Secretary” as the Secretary of Commerce; “State” as each of several States of the United States, the District of Columbia, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States; “Straddling Stock” as a stock of fisheries resources that occurs in the exclusive economic zone of one or more parties of the Convention and the Convention Area; and “Transshipment” as the unloading of fishery resources derived from fishing in the Convention Area on-board a fishing vessel to another fishing vessel either at sea or in port.

*Section 3. United States participation in the North Pacific Fisheries Convention.*

This section would require five Commissioners to represent the United States on the Commission. The President would appoint two U.S. Commissioners who are knowledgeable or experienced concerning fishery resources in the North Pacific Ocean, and who are officers or employees of the Department of Commerce, the Department of State, or the USCG. In addition, one Commissioner would be the chairperson of the North Pacific Fishery Management Council, one Commissioner would be the chairperson of the Pacific Fishery Management Council, and one Commissioner would be the chairperson of the Western Pacific Fishery Management Council. This section would authorize the Secretary of State, in consultation with the Secretary of Commerce, to designate an alternate to the Commission. In the absence of a Commissioner, the alternate would have all powers and duties of a Commissioner, and serve the remainder of the term of the Commissioner that the alternate is substituting for.

If the Commissioner or employee is not an officer or employee of the U.S. Government, he or she would not be considered a Federal employee, except for the purposes of injury compensation or tort claims liability. Under this section the Commissioner and the alternate Commissioner would receive no compensation, except for travel reimbursements. This section would allow the Secretary of Commerce to reimburse the Secretary of State for amounts expended by the Secretary of State.

This section would establish a permanent advisory committee of 11 members appointed by the Secretary of Commerce (Advisory Committee). Advisory Committee members would represent groups concerned with the fishery resources covered by the North Pacific Fisheries Convention and serve a term of two years and be eligible

for not more than three consecutive terms. There would be three members engaged in commercial fishing, one from the North Pacific Fishery Management Council management area, one from the Pacific Fishery Management Council management area, and one from the Western Pacific Fishery Management Council management area; three members from the indigenous population of the North Pacific; one marine fisheries scientist; one member nominated by the Governor of Alaska, one nominated by the Governor of Hawaii, and one nominated by the Governor of Washington. This section also would require the Advisory Committee to determine its organization and procedures for carrying out its functions.

The Advisory Committee would be required to publish and make public a statement of its organization, practices, and procedures. Except when in executive session, Advisory Committee meetings would be open to the public. The members of the Advisory Committee would not be paid, but would be reimbursed for travel expenses. They would not be considered Federal employees except for the purposes of injury compensation or tort claims liability.

In instances in which the United States is involved in meetings of the Convention, it would be represented by the Commissioners and the Advisory Committee.

*Section 4. Authority and responsibility of the Secretary of State.*

The section would give the Secretary of State the authority to receive and transmit, on behalf of the United States, various communications from and to the Commission. It would allow the Secretary of State, in consultation with the Secretary of Commerce, to approve, disapprove, object to, or withdraw objections to bylaws and rules adopted by the Commission. With the concurrence of the Secretary of Commerce, the Secretary of State could approve or disapprove the general annual program of the Commission, and act upon any communication it receives.

*Section 5. Authority of the Secretary of Commerce.*

This section would authorize the Secretary of Commerce, in consultation with the Secretary of State and where relevant, the Secretary of the department in which the Coast Guard is operating, to promulgate such regulations as may be necessary to carry out U.S. obligations under this Act.

The Secretary could request and utilize on a reimbursed or non-reimbursed basis assistance and equipment from other Federal departments and agencies. The Secretary of Commerce could conduct scientific, research, and other programs under this Act; conduct the fishery research necessary to implement the Convention; collect, utilize, and disclose necessary information to implement the Convention; if recommended by the Commissioners or proposed by the Council impose a fee not to exceed three percent of the ex-vessel value of fish harvested by United States vessels under this Act; and issue permits to owners and operators of U.S. vessels to fish in the Convention Area.

To the extent practicable, the Secretary of Commerce would ensure that fishery management programs administered under this Act are consistent with existing fishery laws. Except as otherwise specified, this section would give the Secretary of Commerce and the Secretary of the department in which the Coast Guard is oper-

ating the authority to prevent any person from violating this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as through sections 308 through 311 of the MSA (16 U.S.C. 1858, 1859, 1860, 1861), which give the Secretary of Commerce the authority to assess fines.

This section would give the Secretary of Commerce the authority to promulgate regulations applicable to all vessels and persons subject to the jurisdiction of the United States. Regulations promulgated by the Secretary of Commerce under this Act would be subject to judicial review to the extent authorized by law. Upon a motion by the person who files such a petition, the appropriate court would expedite the matter.

*Section 6. Enforcement.*

This section would require the Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating to administer and enforce this Act, and either could request and utilize on a reimbursed or non-reimbursed basis assistance and equipment from other Federal departments and agencies in their enforcement.

This section would give the district courts of the United States exclusive jurisdiction over any case or controversy arising under the provisions of this Act. Under this section, each violation would be a separate offense and the offense would be deemed to have been committed not only in the district where the violation first occurred, but also in any other district authorized by law.

In general, any information submitted to the Secretary of Commerce in compliance with any requirement under this Act would be confidential and may not be disclosed except to a Federal employee who is responsible for administering, implementing, and enforcing this Act, the Commission, the State or Marine Fisheries Commission, when required by court order, and when the Secretary has obtained written authorization from the person submitting the information. Nothing in this section would prevent the information collected by the Secretary of Commerce from being used for conservation and management purposes.

*Section 7. Prohibited acts.*

This section would delineate the various prohibited actions, with respect to this Act, including violation of any provision or regulation or permit; refusing or interfering with an authorized officer boarding and inspecting a fishing vessel; shipping, transporting, selling, purchasing, importing, exporting, or possessing prohibited fisheries resources; engaging in prohibited fishing activities; failing to make, keep, and furnish required information; failing to stop a vessel when hailed by an authorized official of the United States; making false records, or false identification of any fisheries resources involved in interstate or foreign commerce; and refusing boarding by an authorized inspector.

*Section 8. Cooperation in carrying out Convention.*

This section would allow the Secretary of Commerce to cooperate with any Federal agency or any organization in the United States or abroad in carrying out this Act. This section would allow Federal agencies to cooperate in conducting research and to provide facili-

ties and personnel in assisting the Commission. Nothing in this Act would diminish or increase the jurisdiction of any State in its territorial sea of the United States.

*Section 9. Territorial participation.*

This section would require the Secretary of State to ensure that the Northern Mariana Islands can participate in the Commission in the same manner as territories of other nations.

*Section 10. Exclusive Economic Zone notification.*

This section would require the masters of commercial fishing vessels of nations fishing under the management authority of the North Pacific Fisheries Convention that do not carry vessel monitoring systems to, when entering the EEZ bounded by the Convention Area, notify the USCG, ensure that all fishing gear is stowed, and follow requests by an enforcement officer.

*Section 11. Authorizations of appropriations.*

This section would authorize such sums as are necessary to carry out this Act and to pay the United States' contributions to the Commission.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.

