

Calendar No. 729

115TH CONGRESS }
2d Session }

SENATE

{ REPORT
115-430 }

DRIFTNET MODERNIZATION AND BYCATCH
REDUCTION ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 2773



DECEMBER 11, 2018.—Ordered to be printed

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SECOND SESSION

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DRIFTNET MODERNIZATION AND BYCATCH REDUCTION ACT

DECEMBER 11, 2018.—Ordered to be printed

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

R E P O R T

[To accompany S. 2773]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2773) to improve the management of driftnet fishing, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 2773 is to phase out the U.S. West Coast large-scale driftnet fishery, which primarily targets swordfish, and to implement a program to help the affected fishers transition to alternative gear types.

BACKGROUND AND NEEDS

Large-scale driftnet fishing, as defined by the Magnuson-Stevens Fishery Conservation and Management Act (MSA), is a method of fishing in which a gillnet composed of a panel or panels of webbing, or a series of such gillnets, with a total length of two and one-half kilometers (just over one and one half statute miles) or more is placed in the water and allowed to drift with the currents and winds for the purpose of entangling fish.¹ The only such large-scale drift gillnet fishery in the United States is on the west coast and primarily targets swordfish, but also harvests other commercially

¹ 16 U.S.C. §1802(25).

valuable species, such as thresher and mako shark and opah (also known as moonfish).

BYCATCH ISSUES IN THE DRIFT GILLNET FISHERY

The term “bycatch” refers to species that are harvested in a fishery, but which are not sold or kept for personal use, and includes both unmarketable and regulatory discards.² In the early 1990s, the U.S. swordfish gillnet fishery off the west coast killed hundreds of whales, sea turtles, and dolphins annually.³ Beginning in 1996, the National Marine Fisheries Service (NMFS) convened the Pacific Offshore Cetacean Take Reduction Team under the authority of the Marine Mammal Protection Act to develop strategies to reduce entanglement of protected species, which included net modifications and sound-emitting devices. NMFS also designated two large conservation areas off the west coast that are closed to drift gillnet fishing when endangered sea turtles are known to be frequently present. These measures have resulted in a decline of bycatch of protected species to levels comparable to other U.S. fisheries, including the U.S. Atlantic swordfish longline fishery.⁴

PERMITTING HISTORY

The MSA prohibits large-scale driftnet fishing that is subject to the jurisdiction of the United States (i.e., in waters where U.S. law applies) and by U.S. vessels beyond the exclusive economic zone (EEZ)⁵ of any nation.⁶ Within the U.S. EEZ, the drift gillnet fishery on the west coast⁷ is co-managed by the National Oceanic and Atmospheric Administration’s (NOAA) NMFS, the Pacific Fishery Management Council (PFMC), and California, operating under a limited entry permit system.⁸ Federal management of the West Coast drift gillnet fishery occurs under the PFMC’s Highly Migratory Species (HMS) Fishery Management Plan (FMP). NMFS partially approved the HMS FMP in 2004, except for the recommendation to implement Federal permitting of the fishery. Until 2018, West Coast drift gillnet fishery permits were issued only by States. The Oregon Fish and Wildlife Commission managed the drift gillnet fishery for swordfish under the Developmental Fisheries Program. In 2009, Oregon removed swordfish from the Developmental Fisheries Program and, consequently, State permits to fish with drift gillnet gear off Oregon are no longer allowed, leaving California as the only State permitting this fishery.⁹ More recently,

² 16 U.S.C. §1802(2).

³ NOAA National Marine Fisheries Service, “Two Decades Later, Focused Efforts on Reducing Entanglements in Gillnet Fishery Still Paying Off,” June 2017 (http://www.westcoast.fisheries.noaa.gov/stories/2017/09_06082017_drift_gillnet.html) (accessed July 18, 2018).

⁴ Id.

⁵ The U.S. EEZ is a zone contiguous to the territorial sea of the United States, Puerto Rico, the Northern Mariana Islands, and U.S. overseas territories and possessions that extends 200 nautical miles from shore, as established by Proclamation Numbered 5030, dated March 10, 1983. For purposes of the MSA, the inner boundary of the EEZ is a line coterminous with the seaward boundary of each of the coastal States.

⁶ 16 U.S.C. §1857(1)(M).

⁷ As defined in 60 CFR 660.702, a drift gillnet is a panel of netting, 14 inch (35.5 cm) stretched mesh or greater, suspended vertically in the water by floats along the top and weights along the bottom. A drift gillnet is not stationary or anchored to the bottom.

⁸ NOAA National Marine Fisheries Service West Coast Region, “Swordfish Large Mesh Drift Gillnet” (http://www.westcoast.fisheries.noaa.gov/fisheries/migratory_species/hms_DGN_gear.html) (accessed July 18, 2018).

⁹ Pacific Fishery Management Council, Current HMS SAFE Report: Commercial Fisheries Descriptions, May 3, 2018 (<https://www.pcouncil.org/highly-migratory-species/stock-assessment->

in September 2018, California enacted legislation to phase out the use of large-mesh drift gillnets under California law and compensate a permit holder set amounts for a permit (\$10,000) and gear (\$100,000).¹⁰

At the Federal level, in March 2017, the PFMC recommended amending the HMS FMP to implement a limited entry drift gillnet permit, which would put all aspects of the drift gillnet fishery under MSA authority. In March 2018, NMFS issued a final rule to implement this recommendation to create a Federal limited entry permit for the California/Oregon large-mesh drift gillnet fishery.¹¹ Under the FMP as amended, the relatively few remaining California permit holders (the number of active participating vessels in the fishery has remained low, with under 50 vessels since 2003, and an average of only 20 active vessels per year from 2010 through 2015¹²) have until March 31, 2019, to obtain their Federal permits. If such a permit holder does not obtain a Federal permit by this deadline, he or she will lose the opportunity to do so.

ALTERNATIVE GEAR

The only other gear currently authorized for targeting swordfish in the U.S. West Coast EEZ is harpoon gear. In 2014, the PFMC recommended, and in 2015 NMFS approved, the first of several exempted fishing permits to evaluate the success and economic viability of alternative gears to target swordfish in the Eastern Pacific Ocean.¹³ These alternative gears include deep-set buoys and deep-set longlines. The West Coast design for deep-set buoy gear uses heavy weights to lower baited hooks to depths of more than 1,000 feet during the day, avoiding unmarketable or federally protected species that reside in shallower waters. The buoy gear uses an electronic strike detection system to alert fishermen when a fish is on the line and allows for quick retrieval when hooked.¹⁴ Swordfish caught by deep-set buoy gear can fetch higher market prices for fishermen with a lower rate of bycatch of nonmarketable species and protected species,¹⁵ though it is yet unknown if this would translate to higher market value for all permitted fishers if the entire fishery were to transition to deep-set buoy gear.

PREVIOUS RULEMAKING

In 2016, the PFMC recommended that NMFS implement regulations for the California/Oregon large-mesh drift gillnet fishery to establish hard caps on the number of certain protected species (sea turtles, Endangered Species Act-listed marine mammals, bottlenose

and-fishery-evaluation-safe-documents/current-hms-safe-document/commercial-fisheries-descriptions/#dgn) (accessed July 20, 2018).

¹⁰ See 2018 Cal.Stat. ch. 844.

¹¹ NOAA NMFS, Fisheries Off West Coast States; Highly Migratory Fisheries; California Drift Gillnet Fishery; Implementation of a Federal Limited Entry Drift Gillnet Permit, 85 83 Federal Register 11146 (Mar. 14, 2018).

¹² NOAA NMFS West Coast Region, Final Regulatory Impact Review and Final Regulatory Flexibility Analysis for the Protected Species Hard Caps for the California/Oregon Large-Mesh Drift Gillnet Fishery Proposed Rule, RIN 0648-BG23, May 2017.

¹³ NOAA NMFS West Coast Region, "Status of Exempted Fishing Permits" (http://www.westcoast.fisheries.noaa.gov/fisheries/migratory_species/status_exempted_permits.html) (accessed February 23, 2018).

¹⁴ NOAA NMFS West Coast Region, "Innovation in Swordfish Fishery Fetches a Higher Market Price," February 2017 (http://www.westcoast.fisheries.noaa.gov/stories/2017/06_02062017_swordfish_ejp_tagging.html).

¹⁵ Id.

dolphins, and short-finned pilot whales) caught, and close the fishery for the remainder of the season if the caps are met or exceeded within a rolling 2-year period. NOAA proposed this rulemaking in October 2016,¹⁶ but later withdrew it in June 2017,¹⁷ having concluded that the proposal would have likely imposed significant new costs while also overlapping existing conservation measures already in place and therefore not providing significant conservation benefit.¹⁸ The Marine Mammal Commission found the proposed regulations inadequately justified, and expressed concern about potentially undermining the integrity of the take reduction process of the Marine Mammal Protection Act.¹⁹ On October 24, 2018, the U.S. District Court for the Central District of California held that NOAA's withdrawal of the October 2016 rulemaking exceeded the agency's authority under the MSA and the Administrative Procedure Act (APA).²⁰ The court remanded the matter for further action by NOAA consistent with the requirements of section 304 of the MSA (16 U.S.C. 1854) and the APA.

SUMMARY OF PROVISIONS

If enacted, S. 2773, the Driftnet Modernization and Bycatch Reduction Act, as amended, would do the following:

- Direct the Secretary of Commerce to conduct a transition program for existing driftnet permit holders to facilitate the adoption of alternative fishing gear and to make grants to affected fishers through the Bycatch Reduction Engineering Program.
- Prohibit the use of large-scale driftnet fishing by U.S. vessels within the U.S. EEZ not later than 5 years after the date of enactment of this Act.

LEGISLATIVE HISTORY

S. 2773 was introduced on April 26, 2018, by Senator Feinstein (for herself and Senators Capito and Harris) and was referred to the Committee on Commerce, Science, and Transportation of the Senate. Senators Wicker and Blumenthal joined as cosponsors on June 21, 2018. On September 5, 2018, the Committee met in open Executive Session and by voice vote ordered S. 2773 reported favorably with an amendment (in the nature of a substitute).

A companion bill, H.R. 5638, was introduced by Representative Lieu, of California, in the House of Representatives on April 26, 2018, which was referred to the Subcommittee on Water, Power and Oceans of the Committee on Natural Resources of the House of Representatives.

¹⁶ NOAA NMFS, Fisheries off West Coast States; Highly Migratory Fisheries; California Drift Gillnet Fishery; Protected Species Hard Caps for the California/Oregon Large-Mesh Drift Gillnet Fishery, RIN 0648-BG23, 81 Federal Register 70660 (Oct. 1, 2016).

¹⁷ NOAA NMFS, Fisheries off West Coast States; Highly Migratory Fisheries; California Drift Gillnet Fishery; Protected Species Hard Caps for the California/Oregon Large-Mesh Drift Gillnet Fishery, RIN 0648-BG23, 82 Federal Register 26902 (June 12, 2017).

¹⁸ NOAA NMFS West Coast Region, "FAQs: West Coast drift gillnet (DGN) fishery & protected species," June 8, 2017.

¹⁹ Marine Mammal Commission letter to NMFS West Coast Region Re: NOAA-NMFS-2016-0123. December 28, 2016 (<http://www.mmc.gov/wp-content/uploads/16-12-28Enriques-DGN-Fishery-Hard-Caps.pdf>).

²⁰ See generally Order Re: Plaintiff's Motion for Summary Judgment (DE 54) and Defendant's Cross-Motion for Summary Judgment, *Oceana Inc. v. Ross*, Case No. 2:17-cv-05146-RGK-JEM (C.D.Cal. 2018).

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:

Driftnet Modernization and Bycatch Reduction Act

S. 2773 would amend the Magnuson-Stevens Fishery Conservation and Management Act to require the National Oceanic and Atmospheric Administration (NOAA) to conduct a transition program to facilitate the phaseout of large-scale driftnet fishing. The bill would authorize NOAA to provide grants to operators of driftnet fishing vessels with federal permits to cover the cost of permitting fees, forfeited fishing gear, and new alternative fishing gear.

According to NOAA, 56 vessels currently have driftnet fishing permits. CBO expects that most but not all of those vessels would apply for grants. Using information from NOAA on the expected costs to vessels of forfeiting fishing gear and purchasing alternate gear, CBO estimates that implementing S. 2773 would cost \$4 million over the 2019–2023 period. Such spending would be subject to the appropriation of the necessary amounts.

Enacting S. 2773 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 2773 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

S. 2773 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA).

The bill would impose a private-sector mandate on certain fishing operations by limiting the type of nets that may be used in the drift gillnet (DGN) fishery off of the West Coast. Current law limits only the driftnets length. S. 2773 would amend the definition of large-scale driftnet fishing to include nets with a mesh size that is at least 14 inches. The new definition would effectively prohibit large driftnets in the DGN fishery. The cost of the mandate would be any revenue forgone by fishing operations whose catch decreases as a result of the new limitation. CBO expects that 56 entities with driftnet fishing permits would be affected, and the loss of revenue would be small. As a result, CBO estimates that the aggregate cost of the mandate would fall well below the annual threshold established in UMRA for private-sector mandates (\$160 million in 2018, adjusted annually for inflation).

The CBO staff contacts for this estimate are Robert Reese (for federal costs) and Zachary Byrum (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 2773, as reported, would impose new regulatory requirements on Federal drift gillnet permit holders, which has numbered an average of 20 active permitted vessels per year from 2010 through 2015.

ECONOMIC IMPACT

Enactment of this legislation is not expected to have a negative impact on the Nation's economy. Current permit holders may be able to transition to other fisheries or gear types, but it is likely at least some of them will go out of business.

PRIVACY

The reported bill is not expected to impact the personal privacy of individuals.

PAPERWORK

S. 2773 would not create increases in paperwork burdens if enacted.

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 provide that the bill may be cited as the "Driftnet Modernization and Bycatch Reduction Act."

Section 2. Definition.

This section would amend section 3(25) of the MSA to define large-scale driftnet fishing to specify that it also includes nets with a mesh size of 14 inches or greater, aligning with the drift gillnet definition in the Code of Federal Regulations.²¹

Section 3. Findings and policy.

This section would amend section 206 of the MSA, the Driftnet Act Amendments of 1990, to add that Congress finds that large-scale driftnet fishing causes significant entanglement and mortality of living marine resources. This section also would amend section 206 to declare that it is the policy of Congress to prioritize the phase out of large-scale driftnet fishing in the EEZ and promote development of alternative gear types that reduce incidental bycatch of living marine resources.

Section 4. Transition program.

This section would amend section 206 of the MSA to direct the Secretary of Commerce to conduct a transition program to facilitate

²¹ 50 CFR 660.702.

the phase-out of large-scale driftnet fishing and make affected permit holders eligible to receive grants through the Bycatch Reduction Engineering Program to cover fees associated with permit fees, forfeiture of fishing gear, and purchase of alternative gear with minimal incidental catch of living marine resources.

Section 5. Exception.

This section would add an exception to section 307 of the MSA that would prohibit the use of large-scale driftnet fishing by U.S. vessels within the U.S. EEZ not later than 5 years after the date of enactment of this Act.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

MAGNUSON-STEVENSON FISHERY CONSERVATION AND
MANAGEMENT ACT

[16 U.S.C. 1801 et seq.]

SEC. 3. DEFINITIONS.

[16 U.S.C. 1802]

As used in this Act, unless the context otherwise requires—

(1) The term “anadromous species” means species of fish which spawn in fresh or estuarine waters of the United States and which migrate to ocean waters.

(2) * * *

(25) The term “large-scale driftnet fishing” means a method of fishing in which a gillnet composed of a panel or panels of webbing, or a series of such gillnets, with a total length of two and one-half kilometers or more, *or with a mesh size of 14 inches or greater*, is placed in the water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.

(26) * * *

SEC. 206. LARGE-SCALE DRIFTNET FISHING.

[16 U.S.C. 1826]

(a) **SHORT TITLE.**—This section incorporates and expands upon provisions of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 and may be cited as the “Driftnet Act Amendments of 1990”.

(b) **FINDINGS.**—The Congress finds that—

(1) the continued widespread use of large-scale driftnets beyond the exclusive economic zone of any nation is a destructive fishing practice that poses a threat to living marine resources of the world’s oceans, including but not limited to the North and South Pacific Ocean and the Bering Sea;

(2) the use of large-scale driftnets is expanding into new regions of the world’s oceans, including the Atlantic Ocean and Caribbean Sea;

(3) there is a pressing need for detailed and reliable information on the number of seabirds, sea turtles, nontarget fish, and marine mammals that become entangled and die in actively fished large-scale driftnets and in large-scale driftnets that are lost, abandoned, or discarded;

(4) increased efforts, including reliable observer data and enforcement mechanisms, are needed to monitor, assess, control, and reduce the adverse impact of large-scale driftnet fishing on living marine resources;

(5) the nations of the world have agreed in the United Nations, through General Assembly Resolution Numbered 44-225, approved December 22, 1989, by the General Assembly, that a moratorium should be imposed by June 30, 1992, on the use of large-scale driftnets beyond the exclusive economic zone of any nation;

(6) the nations of the South Pacific have agreed to a moratorium on the use of large-scale driftnets in the South Pacific through the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, which was agreed to in Wellington, New Zealand, on November 29, 1989; **[and]**

(7) increasing population pressures and new knowledge of the importance of living marine resources to the health of the global ecosystem demand that greater responsibility be exercised by persons fishing or developing new fisheries beyond the exclusive economic zone of any nation**[.]**; *and*

(8) *within the exclusive economic zone, large-scale driftnet fishing that deploys nets with large mesh sizes causes significant entanglement and mortality of living marine resources, including myriad protected species, despite limitations on the lengths of such nets.*

(c) **POLICY.**—It is declared to be the policy of the Congress in this section that the United States should—

(1) implement the moratorium called for by the United Nations General Assembly in Resolution Numbered 44-225;

(2) support the Tarawa Declaration and the Wellington Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific; **[and]**

(3) secure a permanent ban on the use of destructive fishing practices, and in particular large-scale driftnets, by persons or vessels fishing beyond the exclusive economic zone of any nation**[.]**; *and*

(4) *prioritize the phase out of large-scale driftnet fishing in the exclusive economic zone and promote the development and adoption of alternative fishing methods and gear types that minimize the incidental catch of living marine resources.*

(d) * * *

(i) **FISHING GEAR TRANSITION PROGRAM.**—

(1) **IN GENERAL.**—*The Secretary shall conduct a transition program to facilitate the phase-out of large-scale driftnet fishing and adoption of alternative fishing practices that minimize the incidental catch of living marine resources.*

(2) **PERMISSIBLE USES.**—*Any permit holder participating in the transition program under paragraph (1) is eligible for a grant under section 316, if—*

(A) *the grant is used only the purpose of covering—*

(i) any fee originally associated with a permit authorizing participation in a large-scale driftnet fishery, if such permit is surrendered for permanent revocation, and such permit holder relinquishes any claim associated with the permit;

(ii) a forfeiture of fishing gear associated with a permit described in clause (i); or

(iii) the purchase of alternative gear with minimal incidental catch of living marine resources, if the fishery participant is authorized to continue fishing using such alternative gears; and

(B) the Secretary certifies that the permit authorizing participation has been permanently revoked and that no new permits will be issued to authorize such fishing.

SEC. 307. PROHIBITED ACTS.

[16 U.S.C. 1857]

It is unlawful—

(1) for any person—

(A) to violate any provision of this Act or any regulation or permit issued pursuant to this Act;

(B) * * *

(M) to engage in large-scale driftnet fishing that is subject to the jurisdiction of the United States, including use of a fishing vessel of the United States to engage in such fishing beyond the exclusive economic zone of any nation, *unless such large-scale driftnet fishing—*

(i) deploys, within the exclusive economic zone, a net with a total length of less than two and one-half kilometers and a mesh size of 14 inches or greater; and

(ii) is conducted within 5 years of the date of enactment of the Driftnet Modernization and Bycatch Reduction Act;

(N) to strip pollock of its roe and discard the flesh of the pollock;

(O) to knowingly and willfully fail to disclose, or to falsely disclose, any financial interest as required under section 302(j), or to knowingly vote on a Council decision in violation of section 302(j)(7)(A);

(P)(i) to remove any of the fins of a shark (including the tail) at sea;

(ii) to have custody, control, or possession of any such fin aboard a fishing vessel unless it is naturally attached to the corresponding carcass;

(iii) to transfer any such fin from one vessel to another vessel at sea, or to receive any such fin in such transfer, without the fin naturally attached to the corresponding carcass; or

(iv) to land any such fin that is not naturally attached to the corresponding carcass, or to land any shark carcass without such fins naturally attached;

(Q) to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish taken, possessed, transported, or sold in violation of any foreign law or regulation or any treaty or in contravention of any binding conservation measure adopted by an international

agreement or organization to which the United States is a party; or

(R) to use any fishing vessel to engage in fishing in Federal or State waters, or on the high seas or in the waters of another country, after the Secretary has made a payment to the owner of that fishing vessel under section 312(b)(2).

For purposes of subparagraph (P), there shall be a rebuttable presumption that if any shark fin (including the tail) is found aboard a vessel, other than a fishing vessel, without being naturally attached to the corresponding carcass, such fin was transferred in violation of subparagraph (P)(iii) or that if, after landing, the total weight of shark fins (including the tail) landed from any vessel exceeds five percent of the total weight of shark carcasses landed, such fins were taken, held, or landed in violation of subparagraph (P). In such subparagraph, the term “naturally attached”, with respect to a shark fin, means attached to the corresponding shark carcass through some portion of uncut skin.

(2) for any vessel other than a vessel of the United States, and for the owner or operator of any vessel other than a vessel of the United States, to engage—

(A) in fishing within the boundaries of any State, except—

(i) recreational fishing permitted under section 201(i);

(ii) fish processing permitted under section 306(c); or

(iii) transshipment at sea of fish or fish products within the boundaries of any State in accordance with a permit approved under section 204(d);

(B) in fishing, except recreational fishing permitted under section 201(i), within the exclusive economic zone, or for any anadromous species or Continental Shelf fishery resources beyond such zone, unless such fishing is authorized by, and conducted in accordance with, a valid and applicable permit issued pursuant to section 204(b), (c), or (d); or

(C) except as permitted under section 306(c), in fish processing (as defined in paragraph (4)(A) of such section) within the internal waters of a State (as defined in paragraph (4)(B) of such section);

(3) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to transfer at sea directly or indirectly, or attempt to so transfer at sea, any United States harvested fish to any foreign fishing vessel, while such foreign vessel is within the exclusive economic zone or within the boundaries of any State except to the extent that the foreign fishing vessel has been permitted under section 204(d) or section 306(c) to receive such fish;

(4) for any fishing vessel other than a vessel of the United States to operate, and for the owner or operator of a fishing vessel other than a vessel of the United States to operate such vessel, in the exclusive economic zone or within the boundaries of any State, if—

(A) all fishing gear on the vessel is not stored below deck or in an area where it is not normally used, and not readily available, for fishing; or

(B) all fishing gear on the vessel which is not so stored is not secured and covered so as to render it unusable for fishing;

unless such vessel is authorized to engage in fishing in the area in which the vessel is operating; and

(5) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to engage in fishing in the waters of a foreign nation in a manner that violates an international fishery agreement between that nation and the United States that has been subject to Congressional oversight in the manner described in section 203, or any regulations issued to implement such an agreement; except that the binding provisions of such agreement and implementing regulations shall have been published in the Federal Register prior to such violation.

