

SOUTH PACIFIC TUNA TREATY ACT OF 2023

MARCH 21, 2024.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WESTERMAN, from the Committee on Natural Resources, submitted the following

R E P O R T

[To accompany H.R. 1792]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1792) to amend the South Pacific Tuna Act of 1988, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “South Pacific Tuna Treaty Act of 2023”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Amendment of South Pacific Tuna Act of 1988.
- Sec. 3. Definitions.
- Sec. 4. Prohibited acts.
- Sec. 5. Exceptions.
- Sec. 6. Criminal offenses.
- Sec. 7. Civil penalties.
- Sec. 8. Licenses.
- Sec. 9. Enforcement.
- Sec. 10. Findings by Secretary.
- Sec. 11. Reporting requirements; disclosure of information.
- Sec. 12. Closed Area stowage requirements.
- Sec. 13. Observers.
- Sec. 14. Technical assistance.
- Sec. 15. Arbitration.
- Sec. 16. Disposition of fees, penalties, forfeitures, and other moneys.
- Sec. 17. Additional agreements.

**SEC. 2. AMENDMENT OF SOUTH PACIFIC TUNA ACT OF 1988.**

Except as otherwise expressly provided, wherever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the South Pacific Tuna Act of 1988 (16 U.S.C. 973 et seq.).

**SEC. 3. DEFINITIONS.**

(a) **APPLICABLE NATIONAL LAW.**—Section 2(4) (16 U.S.C. 973(4)) is amended by striking “described in paragraph 1(a) of Annex I of” and inserting “noticed and in effect in accordance with”.

(b) **CLOSED AREA.**—Section 2(5) (16 U.S.C. 973(5)) is amended by striking “of the closed areas identified in Schedule 2 of Annex I of” and inserting “area within the jurisdiction of a Pacific Island Party that is closed to vessels pursuant to a national law of that Pacific Island Party and is noticed and in effect in accordance with”.

(c) **FISHING.**—Section 2(6) (16 U.S.C. 973(6)) is amended—

(1) in subparagraph (C), by inserting “for any purpose” after “harvesting of fish”; and

(2) by amending subparagraph (F) to read as follows:

“(F) use of any other vessel, vehicle, aircraft, or hovercraft, for any activity described in this paragraph except for emergencies involving the health or safety of the crew or the safety of a vessel.”

(d) **FISHING VESSEL.**—Section 2(7) (16 U.S.C. 973(7)) is amended by striking “commercial fishing” and inserting “commercial purse seine fishing for tuna”.

(e) **LICENSING AREA.**—Section 2(8) (16 U.S.C. 973(8)) is amended by striking “in the Treaty Area” and all that follows and inserting “under the jurisdiction of a Pacific Island Party, except for internal waters, territorial seas, archipelagic waters, and any Closed Area.”

(f) **LIMITED AREA; PARTY; TREATY AREA.**—Section 2 (16 U.S.C. 973) is amended—

(1) by striking paragraphs (10), (13), and (18);

(2) by redesignating paragraphs (11) and (12) as paragraphs (10) and (11), respectively;

(3) by redesignating paragraph (14) as paragraph (12); and

(4) by redesignating paragraphs (15) through (17) as paragraphs (14) through (16), respectively.

(g) **REGIONAL TERMS AND CONDITIONS.**—Section 2 (16 U.S.C. 973) is amended by inserting after paragraph (12), as so redesignated, the following:

“(13) The term ‘regional terms and conditions’ means any of the terms or conditions attached by the Administrator to the license issued by the Administrator, as notified by the Secretary.”

**SEC. 4. PROHIBITED ACTS.**

(a) **IN GENERAL.**—Section 5(a) (16 U.S.C. 973c(a)) is amended—

(1) by striking “Except as provided in section 6 of this Act, it” at the beginning and inserting “It”;

(2) by striking paragraphs (3) and (4);

(3) by redesignating paragraphs (5) through (13) as paragraphs (3) through (11), respectively;

(4) in paragraph (3), as so redesignated, by inserting “, except in accordance with an agreement pursuant to the Treaty” after “Closed Area”;

(5) in paragraph (10), as so redesignated, by striking “or” at the end;

(6) in paragraph (11), as so redesignated, by striking the period at the end and inserting a semicolon; and

(7) by adding at the end the following:

“(12) to violate any of the regional terms and conditions; or

“(13) to violate any limit on authorized fishing effort or catch.”

(b) **IN THE LICENSING AREA.**—Section 5(b) (16 U.S.C. 973c(b)) is amended—

(1) by striking “Except as provided in section 6 of this Act, it” and inserting “It”;

(2) by striking paragraph (5); and

(3) by redesignating paragraphs (6) and (7) as paragraphs (5) and (6), respectively.

**SEC. 5. EXCEPTIONS.**

Section 6 (16 U.S.C. 973d) is repealed.

**SEC. 6. CRIMINAL OFFENSES.**

Section 7(a) (16 U.S.C. 973e(a)) is amended by striking “section 5(a) (8), (10), (11), or (12)” and inserting “paragraphs (6), (8), (9), or (10) of section 5(a)”.

**SEC. 7. CIVIL PENALTIES.**

(a) **DETERMINATION OF LIABILITY; AMOUNT; PARTICIPATION BY SECRETARY OF STATE IN ASSESSMENT PROCEEDING.**—Section 8(a) (16 U.S.C. 973f(a)) is amended—

(1) by striking “Code” after “liable to the United States”; and

(2) by striking “Except for those acts prohibited by section 5(a) (4), (5), (7), (8), (10), (11), and (12), and section 5(b) (1), (2), (3), and (7) of this Act, the” and inserting “The”.

(b) WAIVER OF REFERRAL TO ATTORNEY GENERAL.—Section 8(g) (16 U.S.C. 973f(g)) is amended—

(1) by striking “section 5(a)(1), (2), (3), (4), (5), (6), (7), (8), (9), or (13)” and inserting “paragraphs (1), (2), (3), (4), (5), (6), (7), (11), (12), or (13) of section 5(a)”;

(2) in paragraph (2), by striking “, all Limited Areas closed to fishing,” after “outside of the Licensing Area”.

#### SEC. 8. LICENSES.

(a) FORWARDING AND TRANSMITTAL OF VESSEL LICENSE APPLICATION.—Section 9(b) (16 U.S.C. 973g(b)) is amended to read as follows:

“(b) In accordance with subsection (e), and except as provided in subsection (f), the Secretary shall forward a vessel license application to the Administrator whenever such application is in accordance with application procedures established by the Secretary.”

(b) FEES AND SCHEDULES.—Section 9(c) (16 U.S.C. 973g(c)) is amended to read as follows:

“(c) Fees required under the Treaty shall be paid in accordance with the Treaty and any procedures established by the Secretary.”

(c) MINIMUM FEES REQUIRED TO BE RECEIVED IN INITIAL YEAR OF IMPLEMENTATION FOR FORWARDING AND TRANSMITTAL OF LICENSE APPLICATIONS.—Section 9 (16 U.S.C. 973g) is amended—

(1) by striking subsection (f);

(2) by redesignating subsections (g) and (h) as subsections (f) and (g), respectively;

(3) by amending subsection (f), as so redesignated, to read as follows:

“(f) The Secretary, in consultation with the Secretary of State, may determine that a license application should not be forwarded to the Administrator if—

“(1) the application is not in accordance with the Treaty or the procedures established by the Secretary; or

“(2) the owner or charterer—

“(A) is the subject of proceedings under the bankruptcy laws of the United States, unless reasonable financial assurances have been provided to the Secretary;

“(B) has not established to the satisfaction of the Secretary that the fishing vessel is fully insured against all risks and liabilities normally provided in maritime liability insurance; or

“(C) has not paid any penalty which has become final, assessed by the Secretary in accordance with this Act.”; and

(4) in subsection (g), as so redesignated—

(A) by amending paragraph (1) to read as follows:

“(1) chapter 12113 of title 46, United States Code;”;

(B) in paragraph (2), by inserting “of 1972” after “Marine Mammal Protection Act”;

(C) in paragraph (3), by inserting “of 1972” after “Marine Mammal Protection Act”; and

(D) in the matter that follows paragraph (3), by striking “any vessel documented” and all that follows and inserting the following:

“any vessel documented under the laws of the United States as of the date of enactment of the Fisheries Act of 1995 for which a license has been issued under subsection (a) may fish for tuna in the Licensing Area, and on the high seas and in waters subject to the jurisdiction of the United States west of 146° west longitude and east of 129.5° east longitude in accordance with international law, subject to the provisions of the Treaty, this Act, and other applicable law, provided that no such vessel intentionally deploys a purse seine net to encircle any dolphin or other marine mammal in the course of fishing.”

#### SEC. 9. ENFORCEMENT.

(a) NOTICE REQUIREMENTS TO PACIFIC ISLAND PARTY CONCERNING INSTITUTION AND OUTCOME OF LEGAL PROCEEDINGS.—Section 10(c)(1) (16 U.S.C. 973h(c)(1)) is amended—

(1) by striking “paragraph 8 of Article 4 of”; and

(2) by striking “Article 10 of”.

(b) SEARCHES AND SEIZURES BY AUTHORIZED OFFICERS; LIMITATIONS ON POWER.—Section 10(d)(1)(A) (16 U.S.C. 973h(d)(1)(A)) is amended—

(1) in clause (ii), by striking “or” at the end; and

(2) in clause (iii), by adding “or” at the end.

**SEC. 10. FINDINGS BY SECRETARY.**

(a) ORDER TO LEAVE WATERS UPON FAILURE TO SUBMIT TO JURISDICTION OF PACIFIC ISLAND PARTY; PROCEDURE APPLICABLE.—Section 11(a) (16 U.S.C. 973i(a)) is amended—

- (1) by striking “, all Limited Areas,”;
- (2) in paragraph (1)—
  - (A) in subparagraph (A), by striking “paragraph 2 of Article 3 of”; and
  - (B) in subparagraph (C), by striking “within the Treaty Area” and inserting “under the jurisdiction”; and
- (3) in paragraph (2)—
  - (A) in subparagraph (A), by striking “section 5 (a)(4), (a)(5), (b)(2), or (b)(3)” and inserting “paragraph (4) of section 5(a) or paragraphs (2) or (3) of section 5(b)”;
  - (B) in subparagraph (B), by striking “(7)” and inserting “(6)”;
  - (C) in subparagraph (C), by striking “(7)” and inserting “(6)”.

(b) ORDER OF VESSEL TO LEAVE WATERS WHERE PACIFIC ISLAND PARTY INVESTIGATING ALLEGED TREATY INFRINGEMENT.—Section 11(b) (16 U.S.C. 973i(b)) is amended by striking “paragraph 7 of Article 5 of”.

**SEC. 11. REPORTING REQUIREMENTS; DISCLOSURE OF INFORMATION.**

Section 12 (16 U.S.C. 973j) is amended to read as follows:

**“SEC. 12. REPORTING.**

“(a) PROHIBITED DISCLOSURE OF CERTAIN INFORMATION.—The Secretary shall keep confidential and may not disclose the following information, except in accordance with subsection (b):

- “(1) Information provided to the Secretary by the Administrator that the Administrator has designated confidential.
- “(2) Information collected by observers.
- “(3) Information submitted to the Secretary by any person in compliance with the requirements of this Act.

“(b) PERMITTED DISCLOSURE OF CERTAIN INFORMATION.—The Secretary may disclose information described in subsection (a)—

- “(1) if disclosure is ordered by a court;
- “(2) if the information is used by a Federal employee—
  - “(A) for enforcement; or
  - “(B) in support of the homeland and national security missions of the Coast Guard as defined in section 888 of the Homeland Security Act of 2002 (6 U.S.C. 468);
- “(3) if the information is used by a Federal employee or an employee of the Fishery Management Council for Treaty administration or fishery management and monitoring;
- “(4) to the Administrator, in accordance with the requirements of the Treaty and this Act;
- “(5) to the secretariat or equivalent of an international fisheries management organization of which the United States is a member, in accordance with the requirements or decisions of such organization, and insofar as possible, in accordance with an agreement that prevents public disclosure of the identity of any person that submits such information;
- “(6) if the Secretary has obtained written authorization from the person providing such information, and disclosure does not violate other requirements of this Act; or
- “(7) in an aggregate or summary form that does not directly or indirectly disclose the identity of any person that submits such information.”.

**SEC. 12. CLOSED AREA STOWAGE REQUIREMENTS.**

Section 13 (16 U.S.C. 973k) is amended by striking “ In particular, the boom shall be lowered” and all that follows and inserting “and in accordance with any requirements established by the Secretary.”.

**SEC. 13. OBSERVERS.**

Section 14 (16 U.S.C. 973l) is repealed.

**SEC. 14. TECHNICAL ASSISTANCE.**

Section 15 (16 U.S.C. 973m) is amended to read as follows:

**“SEC. 15. TECHNICAL ASSISTANCE.**

“The Secretary and the Secretary of State may provide assistance to a Pacific Island Party to benefit such Pacific Island Party from the development of fisheries resources and the operation of fishing vessels that are licensed pursuant to the Treaty, including—

- “(1) technical assistance;
- “(2) training and capacity building opportunities;
- “(3) facilitation of the implementation of private sector activities or partnerships; and
- “(4) other activities as determined appropriate by the Secretary and the Secretary of State.”.

**SEC. 15. ARBITRATION.**

Section 16 (16 U.S.C. 973n) is amended—

- (1) by striking “Article 6 of” after “arbitral tribunal under”; and
- (2) by striking “paragraph 3 of that Article”, and inserting “the Treaty, shall determine the location of the arbitration”.

**SEC. 16. DISPOSITION OF FEES, PENALTIES, FORFEITURES, AND OTHER MONEYS.**

Section 17 (16 U.S.C. 973o) is amended by striking “Article 4 of”.

**SEC. 17. ADDITIONAL AGREEMENTS.**

Section 18 (16 U.S.C. 973p) is amended by striking “Within 30 days after” and all that follows and inserting “The Secretary may establish procedures for review of any agreements for additional fishing access entered into pursuant to the Treaty.”.

### PURPOSE OF THE LEGISLATION

The purpose of H.R. 1792 is to amend the South Pacific Tuna Act of 1988, and for other purposes.

### BACKGROUND AND NEED FOR LEGISLATION

H.R. 1792, the South Pacific Tuna Treaty Act of 2023, amends the South Pacific Tuna Treaty Act—which implements the South Pacific Tuna Treaty—to incorporate amendments to the Treaty that were originally agreed to in December 2016 and ratified by the Senate without objection in July 2022. First established in 1988, the Treaty grants United States purse seine vessels access to waters under the jurisdiction of the Treaty’s 16 Pacific Island Parties (PIPs).<sup>1</sup>

This partnership has played an important role in strengthening the United States’ fishing sector while enhancing international cooperation between the United States and the PIPs over the last several decades. The Treaty grants the United States increased access to the abundant fishing resources of the Pacific through PIPs’ exclusive economic zones (EEZs) while also strengthening America’s ability to guard against illegal, unreported, and unregulated fishing practices in the region, particularly those of adversaries like China. The Treaty also includes a separate Economic Assistance Agreement, where the United States provides the PIPs \$21 million per year. These efforts enhance the United States’ economic and geopolitical security and strengthen our international alliances.

Starting in 2009, the United States and the PIPs were engaged in negotiations to update the Treaty to improve fishing access for United States vessels in the region. One of the key provisions of the 2016 amendments provides greater clarity to geographic areas that United States vessels can access under the Treaty. The amendments eliminate the definition of “Treaty Area” and redefine “Licensing Area,” which ensures that the Treaty no longer applies on the high seas and establishes a definition for “Closed Area.”

<sup>1</sup> The PIPs are Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Republic of the Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu.

These amendments provide greater certainty for United States vessels to know which areas they can access under the Treaty.

These amendments have been implemented as a Memorandum of Understanding between the United States and PIPs, causing uncertainty and conflict between the structure of the Treaty and the regulatory framework in the United States. For example, Mr. William Gibbons-Fly, the Executive Director of the American Tunaboat Association, stated in testimony before the Committee that “in the absence of U.S. amendments to the implementing legislation, key provisions of the domestic regulatory regime continue to reflect aspects of the Treaty prior to the 2016 amendments being adopted,”<sup>2</sup> causing the domestic industry uncertainty and placing the United States at a competitive disadvantage.

The adoption of this legislation will allow the United States and its regulatory agencies to fully implement the 2016 amendments to the South Pacific Tuna Treaty, providing the certainty and clarity needed for the United States and our fishing industry to access these resources. Adopting this legislation and the amendments to the South Pacific Tuna Treaty will help strengthen both our domestic fishing industry and our international alliances.

#### COMMITTEE ACTION

H.R. 1792 was introduced on March 24, 2023, by Del. Amata Radewagen (R-AS). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Wildlife and Fisheries. On July 27, 2023, the Subcommittee on Water, Wildlife and Fisheries held a hearing on the bill. On October 25–26, 2023, the Committee on Natural Resources met to consider the bill. The Subcommittee on Water, Wildlife and Fisheries was discharged from further consideration of H.R. 1792 by unanimous consent. Del. Amata Radewagen (R-AS) offered an amendment in the nature of a substitute designated Radewagen 008 ANS. The amendment in the nature of a substitute was adopted by unanimous consent. H.R. 1792, as amended, was ordered favorably reported to the House of Representatives by unanimous consent.

#### HEARINGS

For the purposes of clause 3(c)(6) of House rule XIII, the following hearing was used to develop or consider this measure: hearing by the Subcommittee on Water, Wildlife and Fisheries held on July 27, 2023.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title and Table of Contents*

This Act may be cited as the “South Pacific Tuna Treaty Act of 2023.”

##### *Section 2. Amendment of South Pacific Tuna Act of 1988*

Notes that, except when otherwise expressly provided, references to amendment or repeal shall be considered made to a section or

<sup>2</sup>“Testimony of William Gibbons-Fly.” House Committee on Natural Resources, Subcommittee on Water, Wildlife and Fisheries. July 27, 2023.

provision of the South Pacific Tuna Act of 1988 (16 U.S.C. 973 et seq.).

*Section 3. Definitions*

Defines key terms in amending the South Pacific Tuna Act of 1988 (16 U.S.C. 973 et seq.).

*Section 4. Prohibited acts*

Amends prohibited acts under the South Pacific Tuna Act of 1988 (16 U.S.C. 973 et seq.). Prohibits violation of any regional terms, conditions, or limits on fishing effort or catch.

Streamlines the prohibition on operating vessels in a Licensing Area and terms of agreement between the United States and a PIP.

*Section 5. Exceptions*

Repeals the exceptions to prohibitions for certain types of tuna fishing methods and prevents agreements of exceptions for prohibitions.

*Section 6. Criminal offenses*

Reorganizes the paragraphs of prohibited acts that are defined as criminal offenses.

*Section 7. Civil penalties*

Clarifies that those found to have committed a prohibited act shall be held liable to the United States. Clarifies that all penalties shall not exceed \$250,000.

*Section 8. Licenses*

Amends the process by which the Secretary of Commerce and the Administrator of a Pacific Island Party process license applications. Allows the Secretary of Commerce to establish procedures to pay fees for licenses and eliminates the requirement that the Secretary of Commerce receive a minimum amount of license fees before forwarding applications to the Secretary of State and the Administrator of a Pacific Island Party. It also gives the Secretary of Commerce and the Secretary of State the authority to deny forwarding a license application. Clarifies the grandfathering of certain vessels before November 3, 1995.

*Section 9. Enforcement*

Clarifies that enforcement applies to the entire Treaty and makes grammatical corrections to the section governing searches and seizures.

*Section 10. Findings by Secretary*

Clarifies the defined areas in accordance with Treaty amendments that the Secretary of Commerce and the Secretary of State may order a vessel to leave.

*Section 11. Reporting requirements; disclosure of information*

Requires certain information to be kept confidential by the Secretary of Commerce but allows for confidential information to be disclosed in certain circumstances.

*Section 12. Closed area stowage requirements*

Gives the Secretary of Commerce more authority to develop requirements for vessel storage when in a closed area.

*Section 13. Observers*

Strikes the provision of the Treaty that requires observers' access to vessels to ensure compliance with the Treaty.

*Section 14. Technical assistance*

Changes what is classified as technical assistance under the Treaty to include training, capacity building, and leveraging the private sector. Eliminates the requirements that the United States tuna industry provide \$250,000 for technical assistance annually.

*Section 15. Arbitration*

Clarifies the process of determining the location of an arbitration process under the Treaty.

*Section 16. Disposition of fees, penalties, forfeitures, and other monies*

Ensures that fines or penalties are paid to the extent required by the entire Treaty.

*Section 17. Additional agreements*

Grants the Secretary the authority to establish procedures to pursue additional agreements in addition to the Treaty.

## COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

## COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. *Cost of Legislation and the Congressional Budget Act.* With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

<b>H.R. 1792, South Pacific Tuna Treaty Act of 2023</b>			
As ordered reported by the House Committee on Natural Resources on October 26, 2023			
By Fiscal Year, Millions of Dollars	2024	2024-2028	2024-2033
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	*	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2035?	No	Statutory pay-as-you-go procedures apply?	No
		<b>Mandate Effects</b>	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2035?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

H.R. 1792 would amend the South Pacific Tuna Act of 1988 to incorporate amendments made to the South Pacific Tuna Treaty, which were agreed to by the United States and 16 Pacific Island Parties in December 2016. Until those amendments are enacted into law, the amended treaty cannot be fully enforced upon U.S. fishing vessels. Under the bill, the National Oceanic and Atmospheric Administration (NOAA) would promulgate regulations to implement all the provisions of the amended treaty.

Using information from NOAA, CBO estimates that the cost to revise regulations and administer the requirements of the treaty would be insignificant over the 2024–2029 period. Any spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Aurora Swanson. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,  
*Director, Congressional Budget Office.*

*2. General Performance Goals and Objectives.* As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to amend the South Pacific Tuna Act of 1988, and for other purposes.

#### EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clauses 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

#### UNFUNDED MANDATES REFORM ACT STATEMENT

According to the Congressional Budget Office, H.R. 1792 contains no unfunded mandates as defined in the Unfunded Mandates Reform Act.

## EXISTING PROGRAMS

*Directed Rule Making.* This bill does not contain any directed rule makings.

*Duplication of Existing Programs.* This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

## APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

## PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill's purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

## CHANGES IN EXISTING LAW

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, 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 matter is printed in italics, and existing law in which no change is proposed is shown in roman):

**SOUTH PACIFIC TUNA ACT OF 1988**

\* \* \* \* \*

**SEC. 2. DEFINITIONS.**

As used in this Act—

(1) The term "Administrator" means the individual or organization designated by the Pacific Island Parties to act on their behalf under the Treaty and notified to the United States Government.

(2) The term "Authorized Officer" means any officer who is authorized by the Secretary, or the Secretary of the department in which the Coast Guard is operating, or the head of any Federal or State agency which has entered into an enforcement agreement with the Secretary under section 10(a) of this Act.

(3) The term "Authorized Party Officer" means any officer authorized by a Pacific Island Party to enforce the provisions of the Treaty.

(4) The term "applicable national law" means any provision of law of a Pacific Island Party which is [described in para-

graph 1(a) of Annex I of] *noticed and in effect in accordance with the Treaty.*

(5) The term “Closed Area” means any [of the closed areas identified in Schedule 2 of Annex I of] *area within the jurisdiction of a Pacific Island Party that is closed to vessels pursuant to a national law of that Pacific Island Party and is noticed and in effect in accordance with the Treaty.*

(6) The term “fishing” means—

(A) searching for, catching, taking, or harvesting fish;

(B) attempting to search for, catch, take, or harvest fish;

(C) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking, or harvesting of fish *for any purpose*;

(D) placing, searching for, or recovering fish aggregating devices or associated electronic equipment such as radio beacons;

(E) any operations at sea directly in support of, or in preparation for, any activity described in this paragraph; or

[(F) aircraft use, relating to the activities described in this paragraph except for flights in emergencies involving the health or safety of crew members or the safety of a vessel.]

*(F) use of any other vessel, vehicle, aircraft, or hovercraft, for any activity described in this paragraph except for emergencies involving the health or safety of the crew or the safety of a vessel.*

(7) The term “fishing vessel” or “vessel” means any boat, ship, or other craft which is used for, equipped to be used for, or of a type normally used for [commercial fishing] *commercial purse seine fishing for tuna*, and which is documented under the laws of the United States.

(8) The term “Licensing Area” means all waters [in the Treaty Area except for—

[(A) those waters subject to the jurisdiction of the United States in accordance with international law;

[(B) those waters within Closed Areas; and

[(C) those waters within Limited Areas closed to fishing.] *under the jurisdiction of a Pacific Island Party, except for internal waters, territorial seas, archipelagic waters, and any Closed Area.*

(9) The term “licensing period” means the period of validity of licenses issued in accordance with the Treaty.

[(10) The term “Limited Area” means any area so identified in Schedule 3 of Annex I of the Treaty.]

[(11)] (10) The term “operator” means any person who is in charge of, directs or controls a vessel, including the owner, charterer, and master.

[(12)] (11) The term “Pacific Island Party” means a Pacific Island nation which is a party to the Treaty.

[(13) The term “Party” means a nation which is a party to the Treaty.]

[(14)] (12) The term “person” means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or

not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

(13) *The term “regional terms and conditions” means any of the terms or conditions attached by the Administrator to the license issued by the Administrator, as notified by the Secretary.*

[(15)] (14) The term “Secretary” means the Secretary of Commerce, or the designee of the Secretary of Commerce.

[(16)] (15) The term “State” means each of the several States, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States.

[(17)] (16) The term “Treaty” means the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, signed in Port Moresby, Papua New Guinea, April 2, 1987, and its Annexes, Schedules, and implementing agreements.

[(18) The term “Treaty Area” means the area so described in paragraph 1(k) of Article 1 of the Treaty.]

\* \* \* \* \*

**SEC. 5. PROHIBITED ACTS.**

(a) [Except as provided in section 6 of this Act, it] *It is unlawful for any person subject to the jurisdiction of the United States—*

(1) to violate any provision of this Act or any regulation or order issued pursuant to this Act;

(2) to use a vessel for fishing in violation of an applicable national law;

[(3) who has entered into a fishing arrangement under paragraph 3 of Article 3 of the Treaty, to violate the terms and conditions of such fishing arrangement if the Secretary of State has decided under section 18 of this Act that Article 4 and paragraph 6 of Article 5 of the Treaty shall apply to the arrangement;

[(4) to use a vessel for fishing in any Limited Area in violation of any requirement in Schedule 3 of Annex I of the Treaty;]

[(5)] (3) to use a vessel for fishing in any Closed Area, *except in accordance with an agreement pursuant to the Treaty;*

[(6)] (4) to falsify any information required to be reported, notified, communicated, or recorded pursuant to a requirement of this Act, or to fail to submit any required information, or to fail to report to the Secretary immediately any change in circumstances which has the effect of rendering any such information false, incomplete, or misleading;

[(7)] (5) to intentionally destroy evidence which could be used to determine if a violation of this Act or the Treaty has occurred;

[(8)] (6) to refuse to permit any Authorized Officer or Authorized Party Officer to board a fishing vessel for purposes of conducting a search or inspection in connection with the enforcement of this Act or the Treaty;

[(9)] (7) to refuse to comply with the instructions of an Authorized Officer or Authorized Party Officer relating to fishing activities under the Treaty;

[(10)] (8) to forcibly assault, resist, oppose, impede, intimidate, or interfere with—

(A) any Authorized Officer or Authorized Party Officer in the conduct of a search or inspection in connection with the enforcement of this Act or the Treaty; or

(B) an observer in the conduct of observer duties under the Treaty;

[(11)] (9) to resist a lawful arrest for any act prohibited by this section;

[(12)] (10) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section; [or]

[(13)] (11) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this Act or any regulation, permit, or the Treaty, with the knowledge that the fish were so taken or retained[.];

(12) to violate any of the regional terms and conditions; or

(13) to violate any limit on authorized fishing effort or catch.

(b) [Except as provided in section 6 of this Act, it] It is unlawful for any person subject to the jurisdiction of the United States when in the Licensing Area—

(1) to use a vessel to fish unless validly licensed as required by the Administrator;

(2) to use a vessel for directed fishing for southern bluefin tuna or for fishing for any kinds of fish other than tunas, except that fish may be caught as an incidental by-catch;

(3) to use a vessel for fishing by any method other than the purse-seine method;

(4) to use any vessel to engage in fishing after the revocation of its license, or during the period of suspension of an applicable license;

[(5)] (5) to operate a vessel in such a way as to disrupt or in any other way adversely affect the activities of traditional and locally based fishermen and fishing vessels;]

[(6)] (6) to use a vessel to fish in a manner inconsistent with an order issued by the Secretary under section 11 of this Act; or

[(7)] (7) except for circumstances involving force majeure and other emergencies involving the health or safety of crew members or the safety of the vessel, to use an aircraft in association with the fishing activities of a vessel unless it is identified in the license application for the vessel, or any amendment thereto.

#### **[SEC. 6. EXCEPTIONS.**

[(a)] The prohibitions of section 5 of this Act and the licensing requirements of section 9 of this Act shall not apply to fishing for albacore tuna by vessels using the trolling method or to fishing by vessels using the longline method in the high seas areas of the Treaty area.

[(b) The prohibitions of section 5 (a)(4), (a)(5), and (b)(3) of this Act shall not apply to fishing under the terms and conditions of an arrangement which has been reached under paragraph 3 of Article 3 of the Treaty and which, pursuant to a decision by the Secretary of State under section 18 of this Act, is covered by Article 4 and paragraph 6 of Article 5 of the Treaty.]

**SEC. 7. CRIMINAL OFFENSES.**

(a) A person is guilty of a criminal offense if he or she commits any act prohibited by [section 5(a) (8), (10), (11), or (12)] *paragraphs (6), (8), (9), or (10) of section 5(a)* of this Act.

(b) Any offense described in subsection (a) of this section is punishable by a fine of not more than \$50,000, or imprisonment for not more than 6 months, or both; except that if in the commission of any such offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any Authorized Officer, Authorized Party Officer, or observer under the Treaty in the conduct of their duties, or places any such Authorized Officer, Authorized Party Officer, or observer in fear of imminent bodily injury, the offense is punishable by a fine of not more than \$100,000 or imprisonment for not more than 10 years, or both.

(c) The district courts of the United States shall have jurisdiction over any offense described in this section.

**SEC. 8. CIVIL PENALTIES.**

(a) Any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 5 of this Act, shall be liable to the United States [Code] for a civil penalty. Before issuing a notice of violation, the Secretary shall consult with the Secretary of State. The amount of the civil penalty shall be determined in accordance with considerations set forth in the Treaty and shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require. [Except for those acts prohibited by section 5(a) (4), (5), (7), (8), (10), (11), and (12), and section 5(b) (1), (2), (3), and (7) of this Act, the] *The* amount of the civil penalty shall not exceed \$250,000 for each violation. Upon written notice, the Secretary of State shall have the right to participate in any proceeding initiated to assess a civil penalty for violation of this Act.

(b) Any person against whom a civil penalty is assessed under subsection (a) of this section may obtain review thereof in the United States district court for the appropriate district by filing a complaint in such court within 30 days from the date of the order and by simultaneously serving a copy of the complaint by certified mail on the Secretary, the Attorney General of the United States, and the appropriate United States Attorney. The Secretary shall promptly file in the court a certified copy of the record upon which the violation was found or the penalty imposed. The findings and order of the Secretary shall be set aside or modified by the court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(c) Except as provided in subsection (g) of this section, if any person fails to pay an assessment of a civil penalty after it has become

a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States.

(d) Except as provided in subsection (g) of this section, a fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used in the commission of an act prohibited by section 5 of this Act shall be liable in rem for any civil penalty assessed for the violation under section 8 of this Act and may be proceeded against in any district court of the United States having jurisdiction thereof. The penalty shall constitute a maritime lien on the vessel which may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.

(e) The Secretary, after consultation with the Secretary of State, may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

(f) For the purposes of conducting any hearing under this section, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon a person pursuant to this subsection, the district court of the United States for any district in which the person is found, resides, or transacts business, upon application by the United States and after notice to the person, shall have jurisdiction to issue an order requiring the person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey the order of the court may be punished by the court as a contempt thereof.

(g) If a vessel used in a violation of [section 5(a)(1), (2), (3), (4), (5), (6), (7), (8), (9), or (13)] *paragraphs (1), (2), (3), (4), (5), (6), (7), (11), (12), or (13) of section 5(a)* or section 5(b) of this Act for which a civil penalty has been assessed—

(1) had a valid license under the Treaty at the time of the violation, and

(2) within 60 days after the penalty assessment has become final, leaves and remains outside of the Licensing Area[, all Limited Areas closed to fishing,] and all Closed Areas until the final penalty has been paid,

there shall be no referral to the Attorney General under subsection (c) of this section or in rem action under subsection (d) of this section in connection with such civil penalty.

#### **SEC. 9. LICENSES.**

(a) Licenses to fish in the Licensing Area, to be issued by the Administrator in accordance with the Treaty, may be requested from the Secretary by operators of vessels, under procedures established by the Secretary. The license application shall designate an agent for the service of legal process to be located in Port Moresby, Papua New Guinea. The applicant shall ensure that the designated agent for service of process, acting on behalf of the license holder, will receive and respond to any legal process issued in accordance with

the Treaty and will, within 21 days after notification, travel if necessary for this purpose to any Pacific Island Party at no expense to that Party.

【(b) Except as provided in subsections (e), (f), and (g) of this section, the Secretary shall forward a vessel license application to the Secretary of State for transmittal to the Administrator whenever such application is in accordance with application procedures established by the Secretary, includes a complete application form as required by Annex II of the Treaty, and is accompanied by the required license fee.

【(c)(1) In the initial year of implementation, fees for the first 40 vessel licenses shall be at least \$50,000 each, for any 10 vessel licenses in addition to the first 40 shall be \$60,000 each, and for vessel licenses in addition to the first 50 shall be in accordance with Annex II of the Treaty.

【(2) After such initial year, fees for vessel licenses shall be paid in accordance with fee schedules established under Annex II of the Treaty and published by the Secretary.】

*(b) In accordance with subsection (e), and except as provided in subsection (f), the Secretary shall forward a vessel license application to the Administrator whenever such application is in accordance with application procedures established by the Secretary.*

*(c) Fees required under the Treaty shall be paid in accordance with the Treaty and any procedures established by the Secretary.*

(d) Licenses shall be valid for the licensing period specified by the Administrator.

(e) The Secretary may establish a system of allocating licenses in the event more applications are received than there are licenses available.

【(f) For the initial year of implementation, license fees totaling at least \$1,750,000 must be received by the Secretary before any license applications will be forwarded to the Secretary of State for transmittal to the Administrator.

【(g) The Secretary, in consultation with the Secretary of State, may determine that a license application should not be forwarded to the Administrator for one of the following reasons:

【(1) where the application is not in accordance with the Treaty or the procedures established by the Secretary;

【(2) where the owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, unless reasonable financial assurances have been provided to the Secretary;

【(3) where the owner or charterer has not established to the satisfaction of the Secretary that the fishing vessel is fully insured against all risks and liabilities normally provided in maritime liability insurance;

【(4) where the owner or charterer has not paid any penalty which has become final, assessed by the Secretary in accordance with this Act.】

*(f) The Secretary, in consultation with the Secretary of State, may determine that a license application should not be forwarded to the Administrator if—*

*(1) the application is not in accordance with the Treaty or the procedures established by the Secretary; or*

*(2) the owner or charterer—*

(A) is the subject of proceedings under the bankruptcy laws of the United States, unless reasonable financial assurances have been provided to the Secretary;

(B) has not established to the satisfaction of the Secretary that the fishing vessel is fully insured against all risks and liabilities normally provided in maritime liability insurance; or

(C) has not paid any penalty which has become final, assessed by the Secretary in accordance with this Act.

[(h)] (g) Notwithstanding the requirements of—

[(1) section 1 of the Act of August 26, 1983 (97 Stat. 587; 46 U.S.C. 12108);]

(1) chapter 12113 of title 46, United States Code;

(2) the general permit issued on December 1, 1980, to the American Tunaboat Association under section 104(h)(1) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1374(h)(1)); and

(3) sections 104(h)(2) and 306(a) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1374(h)(2) and 1416(a))—

any vessel documented under the laws of the United States as of the date of enactment of the Fisheries Act of 1995 for which a license has been issued under subsection (a) may fish for tuna in the Treaty Area, including those waters subject to the jurisdiction of the United States in accordance with international law, subject to the provisions of the treaty and this Act, provided that no such vessel fishing in the Treaty Area intentionally deploys a purse seine net to encircle any dolphin or other marine mammal in the course of fishing under the provisions of the Treaty or this Act.]

any vessel documented under the laws of the United States as of the date of enactment of the Fisheries Act of 1995 for which a license has been issued under subsection (a) may fish for tuna in the Licensing Area, and on the high seas and in waters subject to the jurisdiction of the United States west of 146° west longitude and east of 129.5° east longitude in accordance with international law, subject to the provisions of the Treaty, this Act, and other applicable law, provided that no such vessel intentionally deploys a purse seine net to encircle any dolphin or other marine mammal in the course of fishing.

#### SEC. 10. ENFORCEMENT.

(a) The provisions of this Act shall be enforced by the Secretary in cooperation with the Secretary of State. The Secretary, after consultation with the Secretary of State, may by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency and of any State agency in the performance of these duties.

(b)(1) The Secretary shall, at the request of a Pacific Island Party made to the Secretary of State, fully investigate any alleged infringement of the Treaty involving a vessel of the United States, and report as soon as practicable, and in any case within 2 months, to that Party through the Secretary of State on any action taken or proposed by the Secretary in regard to the alleged infringement.

(2) Upon commencement of an investigation under paragraph (1) of this subsection, the Secretary shall notify the operator of any vessel concerned regarding—

(A) the nature of the investigation;

(B) the right of the operator to submit comments, information, or evidence bearing on the investigation and to receive, upon the operator's timely written request to the Secretary, an opportunity to present such comments, information, or evidence orally to the Secretary or the Secretary's representative within 30 days after receipt of such notification.

(c)(1) Prior to instituting any legal proceedings under this Act for any action which involves an alleged infringement of the Treaty in waters within the jurisdiction of a Pacific Island Party, the Secretary, through the Secretary of State, shall notify the Pacific Island Party in accordance with [paragraph 8 of Article 4 of] the Treaty that the proceedings will be instituted. Such notice shall include a statement of the facts believed to show an infringement of the Treaty and the nature of the proposed proceedings, including any proposed charges and any proposed penalties. The Secretary shall not institute such proceedings if the Pacific Island Party objects within 30 days after the effective date of the notice under [Article 10 of] the Treaty.

(2) The Pacific Island Party exercising jurisdiction over the waters involved in such a legal proceeding shall be promptly notified by the Secretary, through the Secretary of State, concerning the outcome of the proceeding.

(d)(1) Any Authorized Officer may—

(A) with or without a warrant or other process—

(i) arrest any person, if he has reasonable cause to believe that the person has committed any act subject to prosecution under section 7 of this Act;

(ii) board, and search or inspect, any fishing vessel which is subject to the provisions of this Act; **[or]**

(iii) seize samples of fish or items for evidence (other than the vessel or its fishing gear or equipment) related to any violation of any provision of this Act; *or*

(iv) order a vessel into the most convenient port of the United States for investigation when an investigation has been requested by a Pacific Island Party in accordance with the Treaty and when such an order is necessary to gather information for such an investigation;

(B) execute any warrant or other process issued by any court of competent jurisdiction;

(C) exercise any other lawful authority; and

(D) investigate alleged violations of the Treaty to the same extent authorized to investigate alleged violations of this Act.

(2) To the extent possible, Authorized Officers shall exercise their powers under paragraph (1)(A) (ii), (iii), and (iv) of this subsection so as not to interfere unduly with the lawful operation of the vessel.

(3) Nothing in this Act shall be construed to limit the enforcement of this or other applicable Federal laws under section 89 of title 14, United States Code.

(e) The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this Act.

**SEC. 11. FINDINGS BY THE SECRETARY.**

(a) Following any investigation conducted in accordance with section 10(b) of this Act, the Secretary, with the concurrence of the Secretary of State, and upon the request of the Pacific Island Party concerned, may order a fishing vessel which has not submitted to the jurisdiction of that Pacific Island Party to leave immediately the Licensing Area[, all Limited Areas,] and all Closed Areas upon making a finding—

(1) that the fishing vessel—

(A) while fishing in the Licensing Area did not have a license under the Treaty to fish in the Licensing Area, and that under [paragraph 2 of Article 3 of] the Treaty, such fishing is not authorized to be conducted in the Licensing Area without a license;

(B) was involved in any incident in which an Authorized Officer, Authorized Party Officer, or observer was allegedly assaulted with resultant bodily harm, physically threatened, forcefully resisted, refused boarding, or subjected to physical intimidation or physical interference in the performance of duties as authorized by this Act or the Treaty;

(C) has not made full payment within 60 days of any amount due as a result of a final judgment or other final determination deriving from a violation in waters [within the Treaty Area] *under the jurisdiction* of a Pacific Island Party; or

(D) was not represented by an agent for service of process in accordance with the Treaty; or

(2) that there is probable cause to believe that the fishing vessel—

(A) was used in violation of [section 5 (a)(4), (a)(5), (b)(2), or (b)(3)] *paragraph (4) of section 5(a) or paragraphs (2) or (3) of section 5(b)* of this Act;

(B) used an aircraft in violation of section 5(b)[(7)](6); or

(C) was involved in an incident in which section 5(a)[(7)](6) was violated.

(b) Upon being advised by the Secretary of State that proper notification to Parties has been made under [paragraph 7 of Article 5 of] the Treaty that a Pacific Island Party is investigating an alleged infringement of the Treaty by a vessel in waters under the jurisdiction of such Pacific Island Party, the Secretary shall order the vessel to leave such waters until the Secretary of State notifies the Secretary that such order is no longer necessary.

(c) The Secretary shall rescind any order issued on the basis of a finding under subsection (a)(1) (C) or (D) of this section as soon as the Secretary determines that the facts underlying the finding do not apply.

(d) No order issued in accordance with this section is subject to judicial review.

(e) Upon a request by the Secretary, the Attorney General shall commence a civil action for appropriate relief, including permanent or temporary injunction, to enforce any order issued by the Secretary under this section.

**[SEC. 12. REPORTING.**

[a) Holders of licenses shall comply with the reporting requirements of part 4 of Annex I to the Treaty.

[(b) Information provided by license holders in Schedules 5 and 6 of Annex I of the Treaty shall be provided to the Secretary for transmittal to the Administrator and to an entity designated by the license holder. Such information thereafter shall not be released and shall be maintained as confidential by the Secretary, including information requested under the Freedom of Information Act, unless disclosure is required under court order or unless the information is essential for an enforcement action under section 5, 10(b), 10(c), or 11 of this Act, or any other proper law enforcement action.]

**SEC. 12. REPORTING.**

(a) *PROHIBITED DISCLOSURE OF CERTAIN INFORMATION.*—*The Secretary shall keep confidential and may not disclose the following information, except in accordance with subsection (b):*

(1) *Information provided to the Secretary by the Administrator that the Administrator has designated confidential.*

(2) *Information collected by observers.*

(3) *Information submitted to the Secretary by any person in compliance with the requirements of this Act.*

(b) *PERMITTED DISCLOSURE OF CERTAIN INFORMATION.*—*The Secretary may disclose information described in subsection (a)—*

(1) *if disclosure is ordered by a court;*

(2) *if the information is used by a Federal employee—*

(A) *for enforcement; or*

(B) *in support of the homeland and national security missions of the Coast Guard as defined in section 888 of the Homeland Security Act of 2002 (6 U.S.C. 468);*

(3) *if the information is used by a Federal employee or an employee of the Fishery Management Council for Treaty administration or fishery management and monitoring;*

(4) *to the Administrator, in accordance with the requirements of the Treaty and this Act;*

(5) *to the secretariat or equivalent of an international fisheries management organization of which the United States is a member, in accordance with the requirements or decisions of such organization, and insofar as possible, in accordance with an agreement that prevents public disclosure of the identity of any person that submits such information;*

(6) *if the Secretary has obtained written authorization from the person providing such information, and disclosure does not violate other requirements of this Act; or*

(7) *in an aggregate or summary form that does not directly or indirectly disclose the identity of any person that submits such information.*

**SEC. 13. CLOSED AREA STOWAGE REQUIREMENTS.**

At all times while a vessel is in a Closed Area, the fishing gear of the vessel shall be stowed in such a manner as not to be readily available for fishing. In particular, the boom shall be lowered as far as possible so that the vessel cannot be used for fishing, but so that the skiff is accessible for use in emergency situations; the helicopter, if any, shall be tied down; and launches shall be secured. and in accordance with any requirements established by the Secretary.

**[SEC. 14. OBSERVERS.**

[(a) The operator and each member of the crew of a vessel shall allow and assist any individual identified as an observer under the Treaty by the Pacific Island Parties—

[(1) to board the vessel for scientific, compliance, monitoring and other functions at the point and time notified by the Pacific Island Parties to the Secretary;

[(2) without interfering unduly with the lawful operation of the vessel, to have full access to and use of facilities and equipment on board the vessel which the observer may determine are necessary to carry out observer duties; have full access to the bridge, fish on board, and areas which may be used to hold, process, weigh, and store fish; remove samples; have full access to the vessel's records, including its log and documentation for the purpose of inspection and copying; and gather any other information relating to fisheries in the Licensing Area;

[(3) to disembark at the point and time notified by the Pacific Island Parties to the Secretary; and

[(4) to carry out observer duties safely.

[(b) The operator shall provide any such observer, while on board the vessel, at no expense to the Pacific Island Parties, with food, accommodation, and medical facilities of such reasonable standard as may be acceptable to the Pacific Island Party whose representative is serving as the observer.

[(c) The operator of any vessel from which any fish taken in the Licensing Area is unloaded shall allow, or arrange for, and assist any individual so authorized by the Pacific Island Parties to have full access to any place where such fish is unloaded, to remove samples, and to gather any other information relating to fisheries in the Licensing Area.

**[SEC. 15. TECHNICAL ASSISTANCE.**

[The United States tuna industry shall provide \$250,000 annually in technical assistance, including provision of assistance by technicians, in response to requests coordinated through the Administrator. The Secretary of State shall designate an entity to coordinate the provision of such technical assistance as provided by the United States tuna industry and to provide an annual report to the Secretary of State regarding the provision of such technical assistance.]

**SEC. 15. TECHNICAL ASSISTANCE.**

*The Secretary and the Secretary of State may provide assistance to a Pacific Island Party to benefit such Pacific Island Party from the development of fisheries resources and the operation of fishing vessels that are licensed pursuant to the Treaty, including—*

*(1) technical assistance;*

*(2) training and capacity building opportunities;*

*(3) facilitation of the implementation of private sector activities or partnerships; and*

*(4) other activities as determined appropriate by the Secretary and the Secretary of State.*

**SEC. 16. ARBITRATION.**

In the event of a dispute requiring the establishment of an arbitral tribunal under [Article 6 of] the Treaty, the Secretary of State, in consultation with the Secretary, shall appoint the arbi-

trator to be appointed by the United States under [paragraph 3 of that Article] *the Treaty*, shall determine the location of the arbitration, and shall represent the United States in reaching agreement under such paragraph with each Pacific Island Party involved concerning the appointment of the presiding arbitrator of the tribunal.

**SEC. 17. DISPOSITION OF FEES, PENALTIES, FORFEITURES, AND OTHER MONEYS.**

To the extent required by [Article 4 of] the Treaty, an amount equivalent to the total value of any fine, penalty, or other amount collected as a result of any action, judicial or otherwise, taken pursuant to sections 7 and 8 of this Act shall be paid by the United States through the Secretary of State to the Administrator as soon as reasonably possible following the date that such amount is collected.

**SEC. 18. ADDITIONAL AGREEMENTS.**

[Within 30 days after the Secretary of State's receipt of notice from a Pacific Island Party that it has concluded an arrangement pursuant to paragraph 3 of Article 3 of the Treaty, the Secretary of State shall consult with the Secretary concerning whether the procedures of Article 4 and paragraph 6 of Article 5 of the Treaty should be made applicable to such arrangement. At the conclusion of the consultations the Pacific Island Party and all other persons agreeing to the arrangement shall be notified by the Secretary of State of the resulting decision.] *The Secretary may establish procedures for review of any agreements for additional fishing access entered into pursuant to the Treaty.*

\* \* \* \* \*

