

105TH CONGRESS
1ST SESSION

S. 1221

To amend title 46 of the United States Code to prevent foreign ownership and control of United States flag vessels employed in the fisheries in the navigable waters and exclusive economic zone of the United States, to prevent the issuance of fishery endorsements to certain vessels, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 25, 1997

Mr. STEVENS (for himself, Mr. BREAUX, Mr. MURKOWSKI, and Mr. HOLLINGS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend title 46 of the United States Code to prevent foreign ownership and control of United States flag vessels employed in the fisheries in the navigable waters and exclusive economic zone of the United States, to prevent the issuance of fishery endorsements to certain vessels, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “American Fisheries Act”.

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

Sec. 1. Short title; table of contents.

TITLE I—STANDARD OF OWNERSHIP

Sec. 101. Findings and purposes.

Sec. 102. Standard of ownership.

Sec. 103. Enforcement of standard.

TITLE II—ANTI-REFLAGGING ACT EXCEPTIONS

Sec. 201. Restrictions on build and rebuild savings clause.

Sec. 202. Repeal of ownership savings clause.

TITLE III—PHASE OUT OF CERTAIN VESSELS

Sec. 301. Restriction on fishery endorsements.

Sec. 302. Restriction on loan guarantees.

3 **TITLE I—STANDARD OF OWNERSHIP**

4 **SEC. 101. FINDINGS AND PURPOSES.**

5 (a) FINDINGS.—The Congress finds that—

6 (1) non-United States citizens own and control
 7 many United States flag fishing vessels and are har-
 8 vesting significant amounts of fishery resources in
 9 the navigable waters and exclusive economic zone of
 10 the United States that could otherwise be harvested
 11 by citizens of the United States;

12 (2) in the largest fishery in the exclusive eco-
 13 nomic zone of the United States (the Bering Sea
 14 pollock fishery), Norwegian and Japanese entities
 15 control a substantial majority of the harvesting and
 16 processing through the ownership and control of
 17 United States-flag fishing vessels, including factory
 18 trawlers and large trawlers;

1 (3) these levels of ownership and control of
2 United States flag fishing vessels by non-United
3 States citizens are inconsistent with the intent and
4 requirements of the Commercial Fishing Industry
5 Vessel Anti-Reflagging Act of 1987 (Public Law
6 100–239);

7 (4) the foreign rebuilding requirements of sec-
8 tion 4(a)(4) of such Act were misinterpreted in a
9 manner that rewarded the very speculation Congress
10 sought to prevent with the passage of that Act, re-
11 sulting in a far greater number of foreign-rebuilt
12 vessels entering the fisheries off Alaska than Con-
13 gress intended to allow;

14 (5) under customary international law, includ-
15 ing the United Nations Convention on the Law of
16 the Sea, a coastal state has sovereign rights for the
17 purpose of exploiting, conserving, and managing the
18 living marine resources in its navigable waters and
19 exclusive economic zone, including the sovereign
20 right for its citizens to harvest and process the en-
21 tire allowable catch within its exclusive economic
22 zone if they have sufficient capacity;

23 (6) the United States must have a meaningful
24 and enforceable standard of ownership and control
25 for United States flag vessels employed in the fish-

1 eries of the United States in order to ensure that
2 citizens of the United States are given first priority
3 in the harvesting and processing of the allowable
4 catch in the exclusive economic zone of the United
5 States;

6 (7) consistent with customary international law,
7 the Magnuson-Stevens Fishery Conservation and
8 Management Act allows fishing vessels of other na-
9 tions to harvest or process the portion of the allow-
10 able catch within the exclusive economic zone of the
11 United States that United States flag fishing vessels
12 do not have the capacity to harvest or process; and

13 (8) fishing vessels greater than 165 feet in reg-
14 istered length, of more than 750 gross registered
15 tons, or that have engines capable of producing a
16 total of more than 3,000 shaft horsepower, including
17 factory trawlers and other trawlers that exceed these
18 measurements—

19 (A) are less likely than smaller, less power-
20 ful vessels with smaller gear to avoid bycatch
21 and minimize the mortality of bycatch that can-
22 not be avoided;

23 (B) have been a cause of overfishing in
24 fisheries both within the navigable waters and

1 exclusive economic zone of the United States
2 and elsewhere throughout the world; and

3 (C) are more likely to be owned by inves-
4 tors and under pressure to produce profits at
5 the expense of the long-term health of fishery
6 resources.

7 (b) PURPOSES.—The purposes of this Act are to—

8 (1) establish a meaningful and enforceable
9 standard of United States citizen ownership and
10 control for United States flag vessels employed in
11 the fisheries in the navigable water and exclusive
12 economic zone of the United States;

13 (2) revoke existing fishery endorsements within
14 a reasonable period of time and prohibit the issuance
15 of new fishery endorsements for United States flag
16 vessels that do not meet this standard;

17 (3) begin to phase out the use of fishing vessels
18 greater than 165 feet in registered length, of more
19 than 750 gross registered tons, or that have engines
20 capable of producing a total of more than 3,000
21 shaft horsepower in the navigable waters and exclu-
22 sive economic zone of the United States by prohibit-
23 ing the issuance of new fishery endorsements to ves-
24 sels which exceed these limits;

1 (4) place a capacity reduction burden on the
2 fishing vessels that came through the loophole cre-
3 ated by the misinterpretation of section 4(a)(4) of
4 the Commercial Fishing Vessel Anti-Reflagging Act;
5 and

6 (5) prohibit Federal loan guarantees for the
7 construction of new fishing vessels greater than 165
8 feet in registered length, of more than 750 gross
9 registered tons, or that have engines capable of pro-
10 ducing a total of more than 3,000 shaft horsepower,
11 or for the rebuilding or improvement of existing ves-
12 sels which would result in a fishing vessel which ex-
13 ceeds these limits.

14 **SEC. 102. STANDARD OF OWNERSHIP.**

15 (a) CLARIFICATION OF DOCUMENTATION STAND-
16 ARD.—Section 12102(a) of title 46, United States Code,
17 is amended in paragraph (4) by striking “president or
18 other chief executive officer” and inserting in lieu thereof
19 “chief executive officer, by whatever title,”.

20 (b) STANDARD FOR FISHERY ENDORSEMENTS.—Sec-
21 tion 12102(c) of title 46, United States Code, is amended
22 to read as follows—

23 “(c)(1) A vessel owned by a corporation, partnership,
24 association, trust, joint venture, or other entity is not eligi-
25 ble for a fishery endorsement under section 12108 of this

1 title unless at least 75 per centum of the controlling inter-
2 est in such entity, in the aggregate, is owned by citizens
3 of the United States.

4 “(2) The Secretary shall apply section 2(c) of the
5 Shipping Act, 1916 (46 App. U.S.C. 802(c)) in determin-
6 ing under this subsection whether at least 75 per centum
7 of the controlling interest in an entity is owned by citizens
8 of the United States.”.

9 (c) EFFECTIVE DATE FOR VESSELS WHICH MEET
10 CURRENT STANDARD.—A vessel owned by an entity which
11 satisfies the controlling interest requirements of section
12 12102(c) of title 46, United States Code, as that section
13 was in effect prior to the amendments made by this Act,
14 and for which a fishery endorsement was in effect on Sep-
15 tember 25, 1997, shall not be required to comply with
16 paragraphs (1) and (2) of section 12102(c) of title 46,
17 United States Code, as amended by this Act, until the date
18 that is eighteen months from the date of the enactment
19 of this Act, provided such entity does not, prior to such
20 compliance date, fail to satisfy the controlling interest re-
21 quirements of section 12102(c) of title 46, United States
22 Code, as that section was in effect prior to the amend-
23 ments made by this Act.

1 **SEC. 103. ENFORCEMENT OF STANDARD.**

2 (a) MARITIME ADMINISTRATION.—(1) To dem-
3 onstrate compliance with section 12102(c) of title 46,
4 United States Code, as amended by this Act, with respect
5 to vessels of more than 100 gross registered tons, an affi-
6 davit of United States citizenship setting forth all relevant
7 facts regarding vessel ownership and control by citizens
8 of the United States shall be filed with the Administrator
9 of the Maritime Administration on an annual basis. Regu-
10 lations to implement this paragraph shall conform to the
11 extent practicable with the regulations establishing the
12 form of citizenship affidavit set forth in part 355 of title
13 46, Code of Federal Regulations, as in effect on Septem-
14 ber 25, 1997.

15 (2) Transfers of ownership and control shall be rigor-
16 ously scrutinized by the Administrator, with particular at-
17 tention given to leases, charters, mortgages, financing, or
18 other arrangements involving other than the purchase over
19 extended periods of time of all, or substantially all, of the
20 living marine resources harvested by a fishing vessel. Reg-
21 ulations to implement this paragraph shall prohibit imper-
22 missible transfers of ownership or control.

23 (3) The Administrator, on a regular basis, shall pro-
24 vide the Commandant of the United States Coast Guard
25 with a list of, and relevant information about, all vessels
26 that the Administrator determines meet the requirements

1 of section 12102(c) of title 46, United States Code, as
2 amended by this Act.

3 (b) COAST GUARD.—The Secretary of Transpor-
4 tation shall establish such requirements as are reasonable
5 and necessary to demonstrate compliance with section
6 12102(c) of title 46, United States Code, as amended by
7 this Act, with respect to vessels of less than or equal to
8 100 gross registered tons.

9 (c) ENDORSEMENTS REVOKED.—The Secretary of
10 Transportation shall revoke the fishery endorsement of—

11 (1) any vessel of less than or equal to 100 gross
12 registered tons that does not demonstrate compli-
13 ance under subsection (b) with section 12102(c) of
14 title 46, United States Code; and

15 (2) any vessel of more than 100 gross reg-
16 istered tons that is not identified on the list provided
17 by the Administrator under subsection (a)(4) as
18 meeting the requirements of section 12102(c) of title
19 46, United States Code.

20 (d) REGULATIONS.—Regulations to implement this
21 section shall be promulgated within 6 months of the date
22 of the enactment of this Act.

23 (e) AUTHORIZATION OF APPROPRIATIONS.—There
24 are authorized to be appropriated such sums as may be
25 necessary to carry out the provisions of this Act.

1 (f) PENALTY.—Section 12122 of title 46, United
2 States Code, is amended by inserting at the end the follow-
3 ing new subsection:

4 “(c) In addition to penalties under subsections (a)
5 and (b), the owner of a documented vessel for which a
6 fishery endorsement has been issued is liable to the United
7 States Government for a civil penalty of up to \$100,000
8 for each day in which such vessel has engaged in fishing
9 (as such term is defined in section 3 of the Magnuson-
10 Stevens Fishery Conservation and Management Act (16
11 U.S.C. 1802)) within the navigable waters or exclusive
12 economic zone of the United States, if the owner or the
13 representative or agent of the owner knowingly falsified
14 or concealed a material fact, or knowingly make a false
15 statement or representation with respect to the eligibility
16 of the vessel under section 12102(c) in applying for such
17 fishery endorsement.”.

18 (g) REVIEW OF TRANSFERS.—Section 9(c)(1) of the
19 Shipping Act, 1916 (46 U.S.C. 808(c)(1)) is amended by
20 striking “in a vessel that has been operated only as a fish-
21 ing vessel, fish processing vessel, or fish tender vessel (as
22 defined in section 2101 of title 46, United States Code)
23 or”.

1 **TITLE II—ANTI-REFLAGGING ACT**
2 **EXCEPTIONS**

3 **SEC. 201. RESTRICTIONS ON BUILD AND REBUILD SAVINGS**
4 **CLAUSE.**

5 (a) REPEAL.—Notwithstanding section 4 of the Com-
6 mercial Fishing Industry Vessel Anti-Reflagging Act of
7 1987 (Public Law 100–239; 46 U.S.C. 12108 note), a cer-
8 tificate of documentation may not be endorsed with a fish-
9 ery endorsement for a vessel which does not meet the re-
10 quirements of paragraphs (2) and (3) of section 12108(a)
11 of title 46, United States Code, unless the certificate of
12 documentation for such vessel was endorsed with a fishery
13 endorsement that was effective on September 25, 1997
14 and the vessel otherwise qualifies for a fishery endorse-
15 ment, including under sections 12102(c) and 12108(e) of
16 title 46, United States Code, as amended by this Act.

17 (b) RESTRICTION.—Notwithstanding subsection (a)
18 or any other provision of law, any fishing vessel (as de-
19 fined in section 2101 of title 46, United States Code)
20 which—

21 (1) had a fishery endorsement in effect on Sep-
22 tember 25, 1997;

23 (2) is greater than 165 feet in registered
24 length, of more than 750 gross registered tons, or

1 has an engine or engines capable of producing a
2 total of more than 3,000 shaft horsepower; and

3 (3) was built in the United States and was—

4 (A) purchased or contracted for purchase
5 prior to July 29, 1987 for use in the fisheries
6 of the United States;

7 (B) rebuilt in a foreign shipyard under a
8 contract entered into prior to June 12, 1988;

9 (C) delivered after such rebuilding and is-
10 sued a fishery endorsement prior to July 29,
11 1990; and

12 (d) not owned or controlled by the same
13 entity during the occurrence of each of the
14 events described in subparagraphs (A) through
15 (C);

16 shall be ineligible for a fishery endorsement under section
17 12108 of title 46, United States Code, if the controlling
18 interest in the entity that owns the fishing vessel on Sep-
19 tember 25, 1997 is materially changed after such date,
20 unless a fishery endorsement for another fishing vessel of
21 the same or greater registered length, gross registered
22 tons, and shaft horsepower, which actively harvested fish-
23 ery resources in the fisheries under the authority of the
24 same Regional Fishery Management Council during the

1 year prior to such material change, is permanently surren-
 2 dered.

3 **SEC. 202. REPEAL OF OWNERSHIP SAVINGS CLAUSE.**

4 (a) REPEAL.—Section 7(b) of the Commercial Fish-
 5 ing Industry Anti-Reflagging Act of 1987 (Public Law
 6 100–239; 46 U.S.C. 12102 note) is hereby repealed.

7 (b) EFFECTIVE DATE.—Subsection (a) shall take ef-
 8 fect eighteen months after the date of the enactment of
 9 this Act.

10 **TITLE III—PHASE OUT OF CERTAIN**
 11 **FISHING VESSELS**

12 **SEC. 301. RESTRICTION ON FISHERY ENDORSEMENTS.**

13 (a) GENERAL PROHIBITION.—Section 12108 of title
 14 46, United States Code, is amended by adding at the end
 15 the following new subsection:

16 “(e) A certificate of documentation may not be en-
 17 dorsed with a fishery endorsement for a fishing vessel that
 18 is greater than 165 feet in registered length, of more than
 19 750 gross registered tons, or that has an engine or engines
 20 capable of producing a total of more than 3,000 shaft
 21 horsepower unless—

22 “(1) the certificate of documentation for such
 23 vessel was endorsed with a fishery endorsement that
 24 was effective on September 25, 1997 and has not
 25 been surrendered at any time thereafter; and

1 “(2) the registered length, gross registered
2 tons, and shaft horsepower do not exceed the length,
3 tonnage, and horsepower of such vessel on such
4 date.”.

5 (b) NEW ENGLAND FISHERIES.—(1) Notwithstand-
6 ing any other provision of law, the Secretary of Commerce
7 may not authorize or permit fishing vessels (as defined
8 in section 2101 of title 46, United States Code) greater
9 than 165 feet in registered length, of more than 750 gross
10 registered tons, or that have an engine or engines capable
11 of producing a total of more than 3,000 shaft horsepower
12 to engage in directed fishing for Atlantic mackerel or At-
13 lantic herring unless the participation of such vessels is
14 specifically allowed in fishery management plans developed
15 and implemented for those fisheries under the Magnuson-
16 Stevens Fishery Conservation and Management Act (16
17 U.S.C. 1801 et seq.).

18 (2) Within 5 days after the date of the enactment
19 of this Act, the Secretary of Commerce shall revoke any
20 permit issued before that date to any vessel described in
21 subsection (a) which would permit such vessel to engage
22 in directed fishing for Atlantic mackerel or Atlantic her-
23 ring.

24 (c) REPLACEMENT OF LOST VESSELS.—Notwith-
25 standing section 12108(e) of title 46, United States Code,

1 as added by this Act, the owner of an existing vessel great-
2 er than 165 feet in registered length, of more than 750
3 gross registered tons, or that has an engine or engines
4 capable of producing a total of more than 3,000 shaft
5 horsepower, and that had a valid fishery endorsement on
6 September 25, 1997, may obtain a fishery endorsement
7 for a replacement vessel in the event of the actual total
8 loss or constructive total loss after September 25, 1997,
9 of such existing vessel, provided that: (1) such loss was
10 caused by an act of God, an act of war, a collision, an
11 act or omission of a party other than the owner or agent
12 of the vessel, or any other event not caused by the willful
13 misconduct of the owner or agent; (2) the existing vessel
14 actively harvested fishery resources in the exclusive eco-
15 nomic zone of the United States during the year prior to
16 such loss; (3) the replacement vessel is of the same or less-
17 er registered length, gross registered tons, and shaft
18 horsepower that the existing vessel; (4) the fishery en-
19 dorsement for the new vessel is issued within 18 months
20 of the loss of the existing vessel; and (5) the replacement
21 vessel otherwise qualifies under laws of the United States
22 for a fishery endorsement.

23 (d) FISHING VESSELS OPERATING BEYOND THE EX-
24 CLUSIVE ECONOMIC ZONE.—Section 12108(e) of title 46,
25 United States Code, as amended by this Act, shall not

1 apply to a fishing vessel engaged in fishing exclusively for
 2 highly migratory species (as that term is defined in section
 3 3 of the Magnuson-Stevens Fishery Conservation and
 4 Management Act (16 U.S.C. 1802)) primarily outside of
 5 the navigable waters and exclusive economic zone of the
 6 United States.

7 **SEC. 302. RESTRICTION ON LOAN GUARANTEES.**

8 Section 302(b) of the Fisheries Financing Act (46
 9 U.S.C. 1274 note) is amended—

10 (1) by inserting “(1)” before “Until October 1,
 11 2001”; and

12 (2) by inserting at the end the following new
 13 paragraph:

14 “(2) No loans may be guaranteed by the Fed-
 15 eral Government for the construction or rebuilding
 16 of a vessel intended for use as a fishing vessel (as
 17 defined in section 2101 of title 46, United States
 18 Code), if such vessel will be greater than 165 feet
 19 in registered length, of more than 750 gross reg-
 20 istered tons, or have an engine or engines capable of
 21 producing a total of more than 3,000 shaft horse-
 22 power, after such construction or rebuilding is com-
 23 pleted.”.

○