

A BILL

To prevent, deter, and eliminate illegal, unreported and unregulated (IUU) fishing through Port state measures

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

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

2 (a) **SHORT TITLE.** – This Act may be cited as the “Port State Measures Agreement  
3 Act of 2011”.

4 (b) **Table of Contents.** –The table of contents of this Act is as follows:

5 Sec. 1. Short title; table of contents.

6 Sec. 2. Purpose.

7 Sec. 3. Definitions.

8 Sec. 4. Application.

9 Sec. 5. Duties of the Secretary.

10 Sec. 6. Advance Notice of Vessel Arrival; Authorization or Denial of Port Entry.

11 Sec. 7. Denial of Port Services.

12 Sec. 8. Inspections.

13 Sec. 9. Prohibited Acts.

14 Sec. 10. Enforcement.

15 Sec. 11. International Cooperation and Assistance.

16 Sec. 12. Relationship to Other Laws.

17 Sec. 13. Authorization of Appropriations.

18 **SEC. 2. PURPOSE.**

19 It is the purpose of this Act to implement the Agreement on Port State Measures to

20 Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, adopted by the

1 Conference of the Food and Agriculture Organization of the United Nations on  
2 November 23, 2009.

3 **SEC. 3. DEFINITIONS.**

4 As used in this Act –

5 (1) The term “Agreement” means the Agreement on Port State Measures to Prevent,  
6 Deter and Eliminate Illegal, Unreported and Unregulated Fishing, adopted by the  
7 Conference of the Food and Agriculture Organization of the United Nations on  
8 November 23, 2009.

9 (2) The term “authorized officer” means:

- 10 (A) Any commissioned, warrant, or petty officer of the United States Coast Guard;
- 11 (B) Any special agent or fishery enforcement officer of the National Marine Fisheries  
12 Service; or
- 13 (C) Any officer designated by the head of any Federal or state agency that has entered  
14 into an agreement with the Secretary to enforce the provisions of the Magnuson-  
15 Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 *et seq.*) or any  
16 other statute administered by the National Oceanic and Atmospheric Administration.

17 (3) The term “conservation and management measures” means binding measures to  
18 conserve and manage living marine resources adopted by a regional fisheries  
19 management organization.

20 (4) The term “container vessel” means a self-propelled ocean-going vessel constructed or  
21 adapted primarily to carry ocean freight containers.

22 (5) The term “FAO” means the Food and Agriculture Organization of the United Nations.

1 (6) The term “fish” means all species of living marine resources, whether processed or  
2 not.

3 (7) The term “fishing” means searching for, attracting, locating, catching, taking or  
4 harvesting fish or any activity which can reasonably be expected to result in the  
5 attracting, locating, catching, taking or harvesting of fish.

6 (8) The term “fishing-related activities” means any operation in support of, or in  
7 preparation for, fishing, including the landing, packaging, processing, transshipping or  
8 transporting of fish that have not been previously landed at a port or place, as well as the  
9 provisioning of personnel, fuel, gear and other supplies at sea.

10 (9) The term “foreign vessel” refers to any vessel other than a vessel of the United States.

11 (10) The term “IUU fishing” means illegal, unreported and unregulated fishing, which  
12 refers to activities:

13 (A) conducted by national or foreign vessels in waters under the jurisdiction of a  
14 nation without the permission of that nation, or in contravention of its laws and  
15 regulations, including activities that have not been reported, or have been  
16 misreported, to the relevant national authority of that nation in contravention of its  
17 laws and regulations;

18 (B) conducted by vessels flying the flag of a nation that is a member of a regional  
19 fisheries management organization in contravention of the conservation and  
20 management measures adopted by that organization and by which that nation is  
21 bound, including activities that have not been reported, or have been misreported,  
22 in contravention of the reporting requirements of that organization;

1 (C) conducted by vessels flying the flag of a nation that is a cooperating non-member  
2 of a regional fisheries management organization that are inconsistent with the  
3 commitments undertaken by that nation as a cooperating non-member of that  
4 organization, including activities that have not been reported, or have been  
5 misreported, in a manner that is inconsistent with those commitments; or

6 (D) conducted in the area of application of a regional fisheries management  
7 organization by vessels without nationality, or by vessels flying the flag of a  
8 nation that is not a member nor a cooperating non-member of that organization  
9 and that undermine the effectiveness of the conservation and management  
10 measures of that organization.

11 (11) The term “landing” means to begin to offload fish, or to offload fish from any vessel  
12 in port or at a dock, berth, beach seawall or ramp, but does not include transshipment.

13 (12) The term “listed IUU vessel” means a vessel that is included in a list, adopted by a  
14 regional fisheries management organization, of vessels having engaged in IUU fishing or  
15 fishing-related activities in support of such fishing.

16 (13) The term “Party” means a government or regional economic integration organization  
17 for which the Agreement is in force.

18 (14) The term “person” means any individual (whether or not a citizen or national of the  
19 United States); any corporation, partnership, association, or other entity (whether or not  
20 organized or existing under the laws of any State); and any Federal, State, local, or  
21 foreign government or any entity of any such government.

22 (15) The term “port” includes roadsteads, offshore terminals and other installations or  
23 places for landing, transshipping, packaging, processing, refueling or resupplying.

1 (16) The term “previously landed” means landed in a port, at a dock, berth, beach seawall  
2 or ramp, and subsequently loaded onto a container or other carrier vessel.

3 (17) The term “processing” means the preparation or packaging of fish to render it  
4 suitable for human consumption, retail sale, industrial uses, export, or long-term storage;  
5 including, but not limited to, cooking, canning, smoking, salting, drying, filleting,  
6 packaging, freezing, or rendering it into meal or oil.

7 (18) The term “RFMO” means regional fisheries management organization, which refers  
8 to an intergovernmental fisheries organization or arrangement, as appropriate, that has the  
9 competence to establish conservation and management measures.

10 (19) The term “Secretary” means the Secretary of Commerce or his or her designee.

11 (20) The term “State” means each of the several States, the District of Columbia, the  
12 Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, Northern  
13 Mariana Islands and any other Commonwealth, territory, or possession of the United  
14 States.

15 (21) The term “transshipment” means to offload and onload or otherwise transfer fish or  
16 fish products from one vessel to another.

17 (22) The term “vessel” means any vessel, ship of another type, or boat used for, equipped  
18 to be used for, or intended to be used for, fishing or fishing-related activities.

19 (23) The term “vessel of the United States” means—

20 (A) a vessel documented under chapter 121 of title 46, United States Code, or  
21 numbered in accordance with chapter 123 of title 46, United States Code; or

22 (B) a vessel owned in whole or part by—  
23 (i) the United States;

- 1 (ii) a State or political subdivision thereof;
- 2 (iii) a citizen or national of the United States; or
- 3 (iv) a corporation created under the laws of the United States or any State;
- 4 unless the vessel has been granted the nationality of a foreign nation consistent
- 5 with international law and a claim of nationality or registry for the vessel is made
- 6 by the master or individual in charge at the time of the enforcement action by an
- 7 officer or employee of the United States authorized to enforce applicable
- 8 provisions of the United States law.

9 **SEC. 4. APPLICATION.**

10 This Act applies to –

- 11 (a) foreign vessels seeking entry to, or in, a port subject to the jurisdiction of the United
- 12 States, except for container vessels that are not carrying fish or, if carrying fish, are
- 13 carrying only fish that have been previously landed *provided that* the Secretary has no
- 14 clear grounds for suspecting that such container vessel has been engaged in IUU fishing
- 15 or fishing-related activities in support of such fishing;
- 16 (b) vessels of the United States seeking entry to, or in, a port subject to the jurisdiction of
- 17 another Party to the Agreement, except for container vessels that are not carrying fish or,
- 18 if carrying fish, only fish that have been previously landed *provided that* the Secretary
- 19 has no clear grounds for suspecting that such container vessel has been engaged in IUU
- 20 fishing or fishing-related activities in support of such fishing; and
- 21 (c) persons subject to the jurisdiction of the United States.

22 **SEC. 5. DUTIES OF THE SECRETARY.**

1 (a) REGULATIONS.—The Secretary may promulgate such regulations, in accordance  
2 with section 553 of title 5, United States Code, as may be necessary to carry out the  
3 purposes of this Act.

4 (b) PROCEDURES. —The Secretary, in consultation with the Secretary of State and the  
5 Secretary of the Department in which the Coast Guard is operating, shall develop  
6 procedures for making determinations and notifications as may be necessary to carry out  
7 the purposes of this Act.

8 (c) FOREIGN VESSEL ENTRY.— The Secretary, in consultation with the Secretary of  
9 Homeland Security and, when the Coast Guard is not operating in the Department of  
10 Homeland Security, the Secretary of the Department in which the Coast Guard is  
11 operating, is authorized to designate and publicize the ports to which the vessels  
12 described in section 4(a) may seek entry. No ports shall be designated under this section  
13 that have not also been designated as ports of entry for customs reporting purposes  
14 pursuant to 19 U.S.C. § 1433. The Secretary shall provide a list of such ports to the  
15 FAO.

16 (d) ELECTRONIC EXCHANGE OF INFORMATION.—In order to implement the  
17 requirements of the Agreement regarding electronic exchange of information, the  
18 Secretary is authorized to designate a point of contact and notify FAO of such  
19 designation. The Secretary may cooperate, including by providing financial assistance, in  
20 efforts to establish an information-sharing mechanism and facilitate the exchange of  
21 information with existing databases relevant to the Agreement.

22 (e) INFORMATION ON AVAILABLE RECOURSE.—The Secretary shall maintain  
23 publicly accessible information regarding any legal recourse available to persons affected

1 by an action taken under this Act. Upon written request, the Secretary shall provide such  
2 information to the owner, operator, master or representative of an affected vessel.

3 **SEC. 6. ADVANCE NOTICE OF VESSEL ARRIVAL; AUTHORIZATION OR**  
4 **DENIAL OF PORT ENTRY.**

5 (a) ADVANCE NOTICE OF VESSEL ARRIVAL.— All vessels described in  
6 section 4(a) must submit to the Secretary of the Department in which the Coast Guard is  
7 operating information as required under the Agreement in advance of such vessel’s  
8 arrival in a port. The Secretary shall, in consultation with the Secretary of the  
9 Department in which the Coast Guard is operating and the Secretary of State, promulgate  
10 regulations to establish a procedure for requiring all foreign vessels seeking entry into a  
11 U.S. port to submit, at a minimum, the information required under the Agreement in  
12 advance of the vessel’s arrival. To the maximum extent possible, such procedures will  
13 utilize existing reporting mechanisms maintained and operated by the Department in  
14 which the Coast Guard is operating.

15 (b) AUTHORIZATION OR DENIAL OF PORT ENTRY.—The Secretary, following the  
16 procedures described in section 5(b), shall decide whether to authorize or deny port entry  
17 and shall communicate this decision to the vessel or to its representative through the  
18 procedure described in subsection (a). The Secretary is authorized to deny entry to—

- 19 (1) any listed IUU vessel;
- 20 (2) any vessel that the Secretary has reasonable grounds to believe has engaged in  
21 IUU fishing or fishing-related activities in support of such fishing; and
- 22 (3) any vessel that the Secretary has reasonable grounds to believe has violated this  
23 Act.

- 1 (c) Notwithstanding subsection (b), the Secretary may allow a vessel entry into port—  
2 (1) for the purpose of rendering assistance to a vessel or person in danger or distress;  
3 (2) to allow, where appropriate, for the scrapping of the vessel; or  
4 (3) for inspection or other enforcement action.

5 (d) DENIAL OF ENTRY.—Where entry is denied under subsection (b), the Secretary  
6 shall provide notification of this decision to the flag nation of the vessel and, as  
7 appropriate, to relevant coastal nations, RFMOs and other international organizations.

8 **SEC. 7. DENIAL OF PORT SERVICES.**

9 (a) Where a vessel has been granted authorization to enter port under section 6, or is  
10 otherwise in a port subject to the jurisdiction of the United States, the Secretary shall  
11 deny such vessel the use of the port for landing, transshipment, packaging and processing  
12 of fish, refueling, resupplying, maintenance and drydocking, if—

13 (1) the vessel entered without authorization under section 6;

14 (2) the vessel is a listed IUU vessel;

15 (3) the Secretary has reasonable grounds to believe that the vessel lacks valid  
16 authorizations to engage in fishing or fishing-related activities as required by its flag  
17 nation or the relevant coastal nation;

18 (4) the Secretary has reasonable grounds to believe that the fish on board was taken in  
19 violation of foreign law or in contravention of any conservation and management  
20 measure;

21 (5) the Secretary has requested confirmation from the flag nation that the fish on  
22 board was taken in accordance with applicable conservation and management measures,

1 and the flag nation has failed to provide such confirmation in accordance with regulations  
2 promulgated under this Act; or

3 (6) the Secretary has reasonable grounds to believe that the vessel has engaged in  
4 IUU fishing or fishing-related activities in support of such fishing, including in support of  
5 a listed IUU vessel, unless the vessel can establish that:

6 (A) it was acting in a manner consistent with applicable conservation and  
7 management measures; or

8 (B) in the case of the provision of personnel, fuel, gear and other supplies at sea,  
9 the vessel provisioned was not, at the time of provisioning, a listed IUU vessel.

10 (b) Notwithstanding subsection (a), the Secretary may allow the use of port services—

11 (1) where the vessel has established that such services are essential to the safety or  
12 health of the crew or safety of the vessel;

13 (2) to allow, where appropriate, for the scrapping of the vessel; or

14 (3) where required pursuant to an inspection or other enforcement action.

15 (c) Where use of port services is denied under subsection (a), the Secretary shall provide  
16 notification, acting through the Secretary of State, of this decision to the flag nation of the  
17 vessel and, as appropriate, to relevant coastal nations, RFMOs and other international  
18 organizations.

19 (d) The Secretary shall withdraw denial of the use of port services upon a determination  
20 that the grounds on which such use was denied were inadequate, erroneous, or no longer  
21 apply. The Secretary shall promptly provide notification of such withdrawal to all  
22 persons notified pursuant to subsection (c).

23

1 **SEC. 8. INSPECTIONS.**

2 (a) INSPECTIONS.—The Secretary, and the Secretary of the Department in which the  
3 Coast Guard is operating, shall conduct vessel inspections as necessary to achieve the  
4 purposes of the Agreement and this Act. In conducting such inspections, the Secretary  
5 may utilize by agreement, on a reimbursable basis or nonreimbursable basis, the  
6 personnel services, equipment (including aircraft and vessels), and facilities of any other  
7 Federal agency, including all elements of the Department of Defense, and of any State  
8 agency. The Secretary shall prioritize vessel inspections considering the following:

- 9 (1) Vessels that have been denied entry or use of a port in accordance with the  
10 Agreement;
- 11 (2) Requests from other relevant Parties, States or regional fisheries management  
12 organizations that particular vessels be inspected, particularly where such requests  
13 are supported by evidence of IUU fishing or fishing-related activities in support of  
14 such fishing by the vessel in questions; and
- 15 (3) Other vessels for which there are clear grounds for suspecting that they have  
16 engaged in IUU fishing or fishing-related activities in support of such fishing.

17 (b) TRANSMITTAL OF INSPECTION RESULTS.—The Secretary shall transmit the  
18 results of an inspection carried out pursuant to this Act to the flag nation of the inspected  
19 vessels and, as appropriate, to—

- 20 (1) relevant Parties and nations, including relevant coastal nations and the nation of  
21 which the vessel’s master is a national;
- 22 (2) relevant RFMOs; and
- 23 (3) the FAO and other relevant international organizations.

1 (c) ACTIONS FOLLOWING INSPECTION.—If, following an inspection, the Secretary  
2 has reasonable grounds to believe that a foreign vessel has engaged in IUU fishing or  
3 fishing-related activities in support of such fishing, the Secretary may take enforcement  
4 action under this Act or other applicable law, and shall—

5 (1) acting through the Secretary of State, promptly notify the flag nation and, as  
6 appropriate, relevant coastal nations, RFMOs and other international organizations, and  
7 the nation of which the vessel’s master is a national; and

8 (2) deny the vessel the use of port services, in accordance with section 7.

9 **SEC. 9. PROHIBITED ACTS.**

10 It is unlawful for any person—

11 (1) to violate any provision of this Act or any regulation promulgated thereunder;

12 (2) to refuse to permit any authorized officer to board, search, or inspect a vessel,  
13 conveyance, or shoreside facility that is subject to the person’s control for purposes of  
14 conducting any search, investigation, or inspection in connection with the enforcement of  
15 this Act or any regulation promulgated thereunder;

16 (3) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized  
17 officer in the conduct of any search, investigation, or inspection described in  
18 paragraph (2);

19 (4) to resist a lawful arrest for any act prohibited by this Act;

20 (5) to interfere with, delay, or prevent, by any means, the apprehension, arrest, or  
21 detection of another person, knowing that such person has committed any act prohibited  
22 by this section;

1 (6) to submit any false information pursuant to any requirement under this Act or any  
2 regulation promulgated under this Act;  
3 (7) to forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or  
4 interfere with any observer, or any data collector employed or under contract to carry out  
5 responsibilities under this Act or any act administered by the Secretary;  
6 (8) to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign  
7 commerce any fish or fish product taken, possessed, transported, or sold in violation of  
8 any foreign law or treaty addressing the conservation or management of living marine  
9 resources, or any conservation and management measure as defined in section 3(3); or  
10 (9) to make or submit, any incomplete, invalid, or false record, account, or label for, or  
11 any false identification of, any fish or fish product (including but not limited to false  
12 identification of the species, harvesting vessel or nation, or the date or location where  
13 harvested) which has been, or is intended to be imported, exported, transported, sold,  
14 offered for sale, purchased, or received in interstate or foreign commerce except where  
15 such making or submission is prohibited by 16 USC §1857(1)(I).

16 **SEC. 10. ENFORCEMENT.**

17 (a) RESPONSIBILITY.—The provisions of this Act shall be enforced by the Secretary  
18 and the Secretary of the Department in which the Coast Guard is operating. In enforcing  
19 this Act, such Secretaries may by agreement utilize, on a reimbursable or  
20 nonreimbursable basis, the personnel, services, equipment (including aircraft and  
21 vessels), and facilities of any other Federal agency, including all elements of the  
22 Department of Defense, or of any State agency. Such Secretaries shall, and the head of  
23 any Federal or State agency that has entered into an agreement with either such Secretary

1 under this section may (if the agreement so provides), authorize officers to enforce the  
2 provisions of this Act or any regulation promulgated under this Act.

3 (b) POWERS OF AUTHORIZED OFFICERS.— (1) Any officer who is authorized  
4 under subsection (a) to enforce the provisions of this Act may, with or without a warrant  
5 or other process—

6 (A) arrest any person, if the officer has probable cause that such person has  
7 committed an act prohibited by section 9;

8 (B) board, and search or inspect, any vessel which is subject to the provisions of  
9 this Act;

10 (C) seize any vessel (together with its fishing gear, furniture, appurtenances,  
11 stores, and cargo) used or employed in, or with respect to which it reasonably appears  
12 that such vessel was used or employed in, the violation of any provision of this Act or  
13 any regulation promulgated under this Act;

14 (D) seize any fish (wherever found) imported, exported, transported, sold,  
15 received, acquired, or purchased in any manner, in connection with or as a result of  
16 the violation of any provision of this Act;

17 (E) seize any other evidence related to any violation of any provision of this Act  
18 or any regulation promulgated under this Act;

19 (F) search or inspect any facility or conveyance used or employed in, or which  
20 reasonably appears to be used or employed in, the storage, processing, transport, or  
21 trade of fish or fish products;

22 (G) inspect records pertaining to the storage, processing, transport, or trade of fish  
23 or fish products;

1 (H) detain, for a period of up to 14 days, any shipment of fish or fish product that  
2 is related to any violation of any provision of this Act or any regulations promulgated  
3 under this Act, and which imported into, landed on, introduced into, exported from, or  
4 transported within the jurisdiction of the United States, or, if such fish or fish product  
5 is deemed to be perishable, sell and retain the proceeds there from for a period of up  
6 to 14 days;

7 (I) search and seize, in accordance with any guidelines which may be issued by  
8 the Attorney General;

9 (J) execute and serve any subpoena, arrest warrant, search warrant issued in  
10 accordance with rule 41 of the Federal Rules of Criminal Procedure, or other warrant  
11 or civil or criminal process issued by any officer or court of competent jurisdiction;

12 (K) access, directly or indirectly, for enforcement purposes any data or  
13 information required to be provided under this Act or regulations promulgated under  
14 this Act, including but not limited to data from vessel-monitoring systems, automatic  
15 identification systems, long-range identification and tracking systems, or any similar  
16 system; and

17 (L) exercise any other lawful authority.

18 (2) Any officer who is authorized by the Secretary, under subsection (a), to enforce  
19 the provisions of this Act may, in accordance with any guidelines which may be issued  
20 by the Attorney General, carry firearms and make an arrest for any offense under the  
21 laws of the United States committed in the officer's presence, or for the commission of  
22 any felony under the laws of the United States, if the officer has probable cause that the  
23 person to be arrested has committed or is committing a felony.

1 (c) ISSUANCE OF CITATIONS.—If any authorized officer finds that a person or vessel  
2 is engaging or has been engaged in violating of any provision of this Act, such officer  
3 may issue a citation to the owner or operator of such vessel in lieu of proceeding under  
4 subsections (f), (g) or (i). The Secretary shall maintain a record of all citations issued  
5 pursuant to this subsection.

6 (d) SUBPOENAS.— For the purposes of conducting any investigation or hearing under  
7 this Act, or any other Act administered by the Secretary, the Secretary may issue  
8 subpoenas for the attendance and testimony of witnesses and the production of relevant  
9 papers, photographs, records, books, and documents in any form, including those in  
10 electronic, optical or magnetic form, and may administer oaths. Witnesses summoned  
11 shall be paid the same fees and mileage that are paid to witnesses in the courts of the  
12 United States. In case of contempt or refusal to obey a subpoena served upon any person  
13 pursuant to this subsection, the district court of the United States for any district in which  
14 such person is found, resides, or transacts business, upon application by the United States  
15 and after notice to such person, shall have jurisdiction to issue an order requiring such  
16 person to appear and give testimony before the Secretary or to appear and produce  
17 documents before the Secretary, or both, and any failure to obey such order of the court  
18 may be punished by such court as a contempt thereof.

19 (e) DISTRICT COURT JURISDICTION.—The several district courts of the United  
20 States shall have jurisdiction over any actions arising under this section. For the purpose  
21 of this section, for Hawaii or any possession of the United States in the Pacific Ocean, the  
22 appropriate court is the United States District Court for the District of Hawaii, except that  
23 in the case of Guam and Wake Island, the appropriate court is the United States District

1 Court for the District of Guam, and except that in the case of the Northern Mariana  
2 Islands, the appropriate court is the United States District Court for the District of the  
3 Northern Mariana Islands. Each violation shall be a separate offense and the offense  
4 shall be deemed to have been committed not only in the district where the violation first  
5 occurred, but also in any other district as authorized by law. Any offenses not committed  
6 in any district are subject to the venue provisions of section 3238 of title 18, United  
7 States Code.

8 (f) CIVIL ENFORCEMENT.—

9 (1) CIVIL ADMINISTRATIVE PENALTIES.—

10 (A) Any person who is found by the Secretary, after notice and opportunity for a  
11 hearing in accordance with section 554 of title 5, United States Code, to have  
12 committed an act prohibited by section 9 shall be liable to the United States for a civil  
13 penalty. The amount of the civil penalty shall not exceed \$250,000 for each  
14 violation. Each day of a continuing violation shall constitute a separate offense. The  
15 amount of such civil penalty shall be assessed by the Secretary, by written notice. In  
16 determining the amount of such penalty, the Secretary shall take into account the  
17 nature, circumstances, extent, and gravity of the prohibited acts committed and, with  
18 respect to the violator, the degree of culpability, any history of prior offenses, and  
19 such other matters as justice may require. In assessing such penalty the Secretary  
20 may also consider any information provided by the violator relating to the ability of  
21 the violator to pay, *provided that* the information is served on the Secretary at least  
22 30 days prior to an administrative hearing.

1 (B) COMPROMISE OR OTHER ACTION BY SECRETARY.— The Secretary  
2 may compromise, modify, or remit, with or without conditions, any civil  
3 administrative penalty which is or may be imposed under this subsection and that has  
4 not been referred to the Attorney General for further enforcement action.

5 (2) CIVIL JUDICIAL PENALTIES.— Any person who violates any provision of  
6 this Act, or any regulation promulgated or permit issued thereunder, shall be subject to a  
7 civil judicial penalty not to exceed \$300,000 for each such violation. Each day of a  
8 continuing violation shall constitute a separate violation. The Attorney General, upon the  
9 request of the Secretary, may commence a civil action in an appropriate district court of  
10 the United States, and such court shall have jurisdiction to award civil penalties and such  
11 other relief as justice may require. In determining the amount of a civil penalty, the court  
12 shall take into account the nature, circumstances, extent, and gravity of the prohibited  
13 acts committed and, with respect to the violator, the degree of culpability, any history of  
14 prior violations, and such other matters as justice may require. In imposing such penalty,  
15 the district court may also consider information related to the ability of the violator to  
16 pay.

17 (3) IN REM JURISDICTION.— A vessel (including its fishing gear, furniture,  
18 appurtenances, stores, and cargo) used in the commission of an act prohibited by  
19 section 9 shall be liable in rem for any civil penalty assessed for such violation under this  
20 section and may be proceeded against in any district court of the United States having  
21 jurisdiction thereof. Such penalty shall constitute a maritime lien on such vessel which  
22 may be recovered in an action in rem in the district court of the United States having  
23 jurisdiction over the vessel.

1 (4) COLLECTION OF ADMINISTRATIVE PENALTIES.— If any person fails to  
2 pay an assessment of a civil penalty under paragraph (1) of this subsection after it has  
3 become a final and unappealable order, the Secretary shall refer the matter to the  
4 Attorney General, who shall recover the amount assessed (plus interest at current  
5 prevailing rates from the date of the final order) in any appropriate district court of the  
6 United States. In such action, the validity and appropriateness of the final order imposing  
7 the civil penalty shall not be subject to review. Any person who fails to pay, on a timely  
8 basis, the amount of an assessment of a civil penalty shall be required to pay, in addition  
9 to such amount and interest, attorney's fees and costs for collection proceedings and a  
10 quarterly nonpayment penalty for each quarter during which such failure to pay persists.  
11 Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate  
12 amount of such person's penalties and nonpayment penalties that are unpaid as of the  
13 beginning of such quarter.

14 (g) FORFEITURE.—

15 (1) CRIMINAL FORFEITURE.— A person who is convicted of an offense in  
16 violation of this Act shall forfeit to the United States—

17 (A) any property, real or personal, constituting or traceable to the gross proceeds  
18 taken, obtained, or retained, in connection with or as a result of the offense, including,  
19 without limitation, any fish (or the fair market value thereof); and

20 (B) any property, real or personal, used or intended to be used, in any manner, to  
21 commit or facilitate the commission of the offense, including, without limitation, any  
22 vessel (including the vessel's equipment, stores, catch and cargo), vehicle, aircraft, or  
23 other means of transportation. Pursuant to section 2461(c) of title 28, United States

1 Code, the provisions of section 413 of the Controlled Substances Act (21 U.S.C.  
2 § 853) other than subsection (d) thereof shall apply to criminal forfeitures under this  
3 section.

4 (2) CIVIL FORFEITURE.— The property set forth below shall be subject to  
5 forfeiture to the United States in accordance with the provisions of chapter 46 of title 18,  
6 United States Code, and no property right shall exist in it:

7 (A) Any property, real or personal, constituting or traceable to the gross proceeds  
8 taken, obtained, or retained, in connection with or as a result of a violation of this Act,  
9 including, without limitation, any fish (or the fair market value thereof).

10 (B) Any property, real or personal, used or intended to be used, in any manner, to  
11 commit or facilitate the commission of a violation of this Act, including, without  
12 limitation, any vessel (including the vessel's equipment, stores, catch and cargo),  
13 vehicle, aircraft, or other means of transportation.

14 (3) APPLICATION OF THE CUSTOMS LAWS.— All provisions of law relating to  
15 seizure, summary judgment, and judicial forfeiture and condemnation for violation of the  
16 customs laws, the disposition of the property forfeited or condemned or the proceeds  
17 from the sale thereof, the remission or mitigation of such forfeitures, and the compromise  
18 of claims shall apply to seizures and forfeitures incurred, or alleged to have been  
19 incurred, under the provisions of this Act, insofar as applicable and not inconsistent with  
20 the provisions hereof. For seizures and forfeitures of property under this section by the  
21 Secretary, such duties as are imposed upon the customs officer or any other person with  
22 respect to the seizure and forfeiture of property under the customs law may be performed

1 by such officers as are designated by the Secretary or, upon request of the Secretary, by  
2 any other agency that has authority to manage and dispose of seized property.

3 (4) PRESUMPTION.— For the purposes of this section there is a rebuttable  
4 presumption that all fish, or components thereof, found on board a vessel that is used or  
5 seized in connection with a violation of this Act or of any regulation promulgated under  
6 this Act were taken, obtained, or retained as a result of IUU fishing or fishing-related  
7 activities in support of such fishing.

8 (h) CRIMINAL ENFORCEMENT.—

9 (1) Any person (other than a foreign government agency, or entity wholly owned and  
10 controlled by a foreign government) who knowingly commits any act prohibited by  
11 section 9 of this Act shall be imprisoned for not more than five years or fined not more  
12 than \$500,000 for individuals or \$1,000,000 for an organization, or both; except that if in  
13 the commission of any such offense the individual uses a dangerous weapon, engages in  
14 conduct that causes bodily injury to any officer authorized to enforce the provisions of  
15 this Act, or places any such officer in fear of imminent bodily injury, the maximum term  
16 of imprisonment is not more than ten years.

17 (2) Any person (other than a foreign government agency, or entity wholly owned and  
18 controlled by a foreign government) who violates the provisions of paragraph (2), (3),  
19 (4), (5) or (6) of section 9, and who, in the exercise of due care should know that such  
20 person's conduct violates such provisions, shall be fined under title 18, United States  
21 Code, or imprisoned not more than one year, or both.

22 (i) PAYMENT OF STORAGE, CARE, AND OTHER COSTS.— Any person assessed a  
23 civil penalty for, or convicted of, any violation of this Act or of any regulation

1 promulgated under this Act, and any claimant in a forfeiture action brought for such a  
2 violation, shall be liable for the reasonable costs incurred by the Secretary in storage,  
3 care, and maintenance of any property seized in connection with the violation.

4 **SEC. 11. INTERNATIONAL COOPERATION AND ASSISTANCE.**

5 (a) To the greatest extent possible, consistent with existing authority and the availability  
6 of funds, the Secretary shall provide appropriate assistance, including grants, to  
7 developing nations and international organizations of which such nations are members to  
8 assist those nations in meeting their obligations under the Agreement.

9 (b) In carrying out subsection (a), the Secretary may, by agreement, on a reimbursable or  
10 nonreimbursable basis, utilize the personnel, services, equipment, and facilities of any  
11 individual, corporation, partnership, association, or other entity, and any Federal, State,  
12 local, or foreign government or any entity of any such government.

13 (c) The Secretary is authorized to transfer funds, subject to the limits of available  
14 appropriations, to any foreign government, international, non-governmental, or  
15 intergovernmental organization for purposes related to carrying out the international  
16 responsibilities of subsection (a) or any statute administered by the Secretary.

17 **SEC. 12. RELATIONSHIP TO OTHER LAWS.**

18 (a) Nothing in this Act shall be construed to displace any requirements imposed by the  
19 customs laws of the United States or any other laws or regulations enforced or  
20 administered by the Secretary of Homeland Security. Where more stringent requirements  
21 regarding port entry or access to port services exist under other federal law, those more  
22 stringent requirements shall apply. Nothing in this Act shall affect a vessel's entry into  
23 port, in accordance with international law, for reasons of *force majeure* or distress.

1 (b) This Act shall be interpreted and applied in accordance with U.S. obligations under  
2 international law.

3 **SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

4 There is authorized to be appropriated to the Secretary such sums as are necessary for  
5 each of fiscal years 20XX through 20XX to carry out the provisions of this Act.