

SENSE OF CONGRESS REGARDING SANCTIONS ON NA-
TIONS UNDERMINING CONSERVATION AND MANAGE-
MENT MEASURES FOR ATLANTIC HIGHLY MIGRATORY
SPECIES

OCTOBER 28, 2003.—Referred to the House Calendar and ordered to be printed

Mr. POMBO, from the Committee on Resources,
submitted the following

R E P O R T

[To accompany H. Con. Res. 268]

The Committee on Resources, to whom was referred the concurrent resolution (H. Con. Res. 268) expressing the sense of the Congress regarding the imposition of sanctions on nations that are undermining the effectiveness of conservation and management measures for Atlantic highly migratory species, including marlin, adopted by the International Commission for the Conservation of Atlantic Tunas and that are threatening the continued viability of United States commercial and recreational fisheries, having considered the same, report favorably thereon without amendment and recommend that the concurrent resolution be agreed to.

PURPOSE OF THE BILL

The purpose of H. Con. Res. 268 is to express the sense of the Congress regarding the imposition of sanctions on nations that are undermining the effectiveness of conservation and management measures for Atlantic highly migratory species, including marlin, adopted by the International Commission for the Conservation of Atlantic Tunas and that are threatening the continued viability of United States commercial and recreational fisheries.

BACKGROUND AND NEED FOR LEGISLATION

Atlantic white marlin are large predatory fish of the open ocean. They are a highly migratory species and range thousands of miles annually throughout tropical, subtropical, and temperate waters of the Atlantic Ocean and adjacent seas. They are typically solitary animals, but they will congregate in areas of high prey density

which consists mostly of smaller fish species and squid. White marlin have little food value, but are prized as game fish, with a large, economically important sport fishery which is centered around the species. Due to their long-ranging migratory nature, regulation of this species is coordinated by the International Commission for the Conservation of Atlantic Tunas (ICCAT) who possess international management authority over blue and white marlin and all Atlantic tunas and tuna-like fishes for member nations. This group adopts binding recommendations to manage for the maximum sustainable catch of the fish populations under its purview.

Atlantic marlin populations have declined throughout their range as a result of fishing activities. Harvests in the international longline fisheries are primarily incidental catch because white marlin are largely not a targeted species. Data show that white marlin are both overfished and are experiencing overfishing with current stocks at less than 15 percent of the MSY (maximum sustainable yield) and fishing pressure approximately seven times greater than the level expected to support the MSY.

In the U.S., white marlin harvests are regulated by the National Marine Fisheries Service (NMFS) in conjunction with ICCAT and consistent with ICCAT recommendations. Under current law in the United States, commercial vessels are prohibited from possessing, retaining or selling any billfish including marlin; however, some marlin are retained during recreational fishing. Other nations routinely catch and sell billfish including white marlin. The vast majority of Atlantic marlin catches (approximately 95 percent) stem from the harvest by vessels from other nations. Reported catches (landings plus dead discards) in U.S. commercial and recreational fisheries during 1999 and 2000 represented 5 and 4 percent, respectively, of the total international mortality. Worldwide, commercial fishing is responsible for over 99 percent of the current reported mortality with recreational tournament fishermen responsible for the comparatively small remainder. The white marlin was recently petitioned to be listed as endangered or threatened under the Endangered Species Act (ESA). After review, NMFS determined the listing was not warranted; however, the Atlantic white marlin would be placed on the ESA "candidate species" list.

There are currently 36 member nations in ICCAT. In 2000, the countries having the highest catches of white marlin in the Atlantic were Chinese Taipei (58% of total catch), European Community-Spain (17%), Japan (8%), EC-France/Spain (8%), and Venezuela (6%). ICCAT has instituted a number of resolutions to limit the harvest of white marlin, but overharvesting by ICCAT member countries remains an issue. In 1997, ICCAT adopted a binding resolution that stated that white and blue marlin landings would be 25 percent less than the 1996 levels. This limit was instituted in 1998 and extended until 2000. In aggregate, member countries met this goal, but not all countries have complied. In particular, Brazil, China, Cote D'Ivoire, and Spain were not in compliance for white marlin in 1999. In 1999, Brazil's allowable quota from ICCAT was 56.3 metric tons, but instead harvested over 156 metric tons. In 2000, ICCAT agreed upon an even more stringent standard in a binding resolution that reduced white marlin landings by 67 percent of the 1999 levels. Data have not been compiled to determine landings subsequent to this resolution.

In addition to non-compliance by ICCAT members, illegal, unregulated, and unreported (IUU) fishing by ICCAT member and non-member countries is of growing importance and is blamed for the overexploitation of several fish stocks. In some fisheries, it accounts for up to 30 percent of total catches. The current effect on white marlin stocks is likely significant, but unknown and not accounted for in current ICCAT stock assessments. ICCAT has adopted a series of resolutions to address IUU fishing by longline vessels. In 1998, a binding resolution was passed instructing member nations to compile data on longline vessels and their catches and to identify those vessels conducting IUU fishing. This resolution also required ICCAT to identify member nations not complying with these stipulations and to recommend trade restrictive measures against those nations. Subsequent resolutions have focused mainly on Japan and Chinese Taipei to discourage transactions with vessels conducting IUU fishing and to establish lists of vessels to be scrapped or reregistered from "flag of convenience" nations to Chinese Taipei.

While ICCAT has recognized these problems, some have questioned the effectiveness of the ICCAT resolutions. Following the 1997 resolution limiting white marlin harvest, the stocks have continued to decline and it is estimated that the more stringent restrictions adopted in 2000 will not allow biomass levels to rebound. ICCAT resolutions pertaining to IUU fishing may also be ineffective. Although some progress has been made, these practices continue and countries and vessels skirt existing resolutions and ignore international pressure. As an example, the White Marlin Status Review Team (SRT) that reviewed the ESA petition to list the white marlin as endangered or threatened concluded that "Current ICCAT management measures are not sufficient to prevent stock decline, and the SRT is concerned about ICCAT's resolve to adopt further, effective management measures to protect white marlin. * * *" The U.S. has implemented domestic management measures to comply with ICCAT resolutions on white marlin; however, as noted above, the U.S. impact on the rebuilding of this species is minimal without the cooperation of other nations.

Since 90 to 95 percent of the fish harvested worldwide are taken within countries' Exclusive Economic Zones (EEZ's) or territorial waters, compliance with international conservation and management measures are left to member states. Non-compliance by non-member nations cannot be restricted or stopped by international management bodies without the use of international pressure or trade sanctions by those nations that are the major markets for fish and fish products.

In addition to problems of non-compliance within countries' EEZs, IUU fishing undermines the conservation and management measures taken by these international management bodies. Several international fisheries management bodies have taken measures to provide importing nations with the ability to track fish products that are caught legally. Those fish products caught outside of the legal framework can be identified and blocked from importation or seized and destroyed. With effective certification systems, those fish products not certified can be traced back to the country of origin and possibly to the vessel.

The Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) recently instituted a catch documentation scheme to track shipments of Patagonian toothfish, also known and marketed as Chilean sea bass, to minimize the impact of IUU fishing on the resource. The U.S. has published a final rule to implement this certification system within the U.S.

In addition, ICCAT has begun the development of a vessel by vessel certification system to allow importing nations to certify that their imports are caught in compliance with international harvesting rules. As one of the major importing nations of ICCAT harvested fish products, the U.S. has been one of the leaders in developing this system.

ICCAT has also passed a number of resolutions encouraging member nations to take unilateral trade actions against those nations—both member and non-member nations—which are out of compliance with international management measures.

Section 8 of the Fishermen's Protection Act of 1967, commonly known as the Pelly Amendment, allows the U.S. to take unilateral trade actions when "nationals of a foreign country, directly or indirectly, are conducting fishing operations in a manner or under circumstances which diminish the effectiveness of an international fishery conservation program." The Pelly Amendment is a two-step process which requires a certification of non-compliance by the Secretary of Commerce followed by a discretionary trade restriction determination made by the President.

The Pelly Amendment certification has been made 36 times since 1974 with trade sanctions invoked only 4 times. Questions have been raised about the effectiveness of the Pelly Amendment sanctions and whether a World Trade Organization challenge against a Pelly Amendment sanction would be upheld.

Since the U.S. is a major player in the estimated \$59.4 billion (2001 figure) international seafood trade market, importing approximately \$18.5 billion of edible and nonedible fishery products and second only to Japan in the value of imported fishery products, any U.S. trade sanctions against nations which are not in compliance with international management regulations can be very effective. Unilateral trade measures by other major importing nations in combination with certification systems by the international fishery management bodies could bring compliance rapidly.

H. Con. Res. 268 expresses the Sense of Congress that sanctions should be imposed on nations that undermine the effectiveness of conservation and management measures for Atlantic marlin adopted by ICCAT. It recommends that the President direct the U.S. Commissioners of ICCAT to: encourage countries to end illegal, unregulated, and unreported, fishing and non-ICCAT compliant fishing practices; use all appropriate and available mechanisms to ensure compliance with ICCAT recommendations; encourage ICCAT to use enforceable measures against nations that undermine ICCAT conservation recommendations; and subject nations whose vessels do not adhere to ICCAT conservation recommendations to import embargos.

H. Con. Res. 268 was introduced because the implementation of the ICCAT resolutions has not been sufficient to curb biomass declines and member and non-member nations continue to be non-compliant and practice IUU fishing activities.

COMMITTEE ACTION

H. Con. Res. 268 was introduced on July 25, 2003, by Congressman Jim Saxton (R–NJ). The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Fisheries Conservation, Wildlife and Oceans. On September 11, 2003, the Subcommittee held a hearing on the bill. On September 24, 2003, the Full Resources Committee met to consider the bill. The Subcommittee on Fisheries Conservation, Wildlife and Oceans was discharged from further consideration of the resolution by unanimous consent. No amendments were offered, and the resolution was then ordered favorably reported to the House of Representatives by unanimous consent.

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 Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. H. Con. Res. 268 is merely a bill expressing a sense of Congress regarding the imposition of sanctions on nations that are undermining the effectiveness of conservation and management measures for Atlantic highly migratory species.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. This bill does not authorize funding and therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.

4. Congressional Budget Office Cost Estimate. The Committee has determined that H. Con. Res. 268 entails no cost to the federal government and therefore, no cost estimate was requested from the Congressional Budget Office.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

COMMITTEE CORRESPONDENCE

HOUSE OF REPRESENTATIVES,
 COMMITTEE ON WAYS AND MEANS,
Washington, DC, October 27, 2003.

Hon. RICHARD W. POMBO,
*Chairman, Committee on Resources,
 Longworth House Office Building, Washington, DC.*

DEAR CHAIRMAN POMBO: I am writing concerning H. Con. Res. 268, regarding the imposition of sanctions on nations that are undermining the effectiveness of conservation and management measures for Atlantic highly migratory species, including marlin, which was marked up by the Committee on Resources on September 24, 2003.

As you know, the Committee on Ways and Means has jurisdiction over matters concerning trade. H. Con. Res. 268, as reported by the Committee on Resources, contains language which suggests imposing new trade sanctions on marlin, and thus falls squarely within the jurisdiction of the Committee on Ways and Means.

However, because the Committee on Resources has been willing to make changes to the relevant provisions so that new sanctions are not authorized, the Committee on Ways and Means will forgo action on this bill in order to expedite this legislation for floor consideration. This is being done with the understanding that it does not in any way prejudice the Committee with respect to the appointment of conferees or its jurisdictional prerogatives on this or similar legislation.

I would appreciate your response to this letter, confirming this understanding with respect to H. Con. Res. 268, and would ask that a copy of our exchange of letters on this matter be included in your committee report.

Best regards,

BILL THOMAS,
Chairman.

HOUSE OF REPRESENTATIVES,
 COMMITTEE ON RESOURCES,
Washington, DC, October 28, 2003.

Hon. BILL THOMAS,
*Chairman, Committee on Ways and Means,
 Longworth House Office Building, Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for your letter regarding H. Con. Res. 268, expressing the sense of the Congress regarding the imposition of sanctions on nations that are undermining the effectiveness of conservation and management measures for Atlantic highly migratory species, including marlin, adopted by the International Commission for the Conservation of Atlantic Tunas and that are threatening the continued viability of United States commercial and recreational fisheries.

I recognize the Committee on Ways and Means' jurisdictional interest in the bill and appreciate your willingness to develop appropriate language for consideration by the House of Representatives later this week. I agree that by allowing the reviewed bill to be scheduled, the Ways and Means Committee does not relinquish any

jurisdiction over the bill or similar legislation. I would also support your request to be named a conferee on the H. Con. Res. 268, if one should become necessary. Finally, I will include your letter and my response in the Committee on Resources' bill report on H. Con. Res. 268, which will be filed on October 28, 2003.

Thank you again for your cooperation, and I look forward to working with you again.

Sincerely,

RICHARD W. POMBO,
Chairman.

○