the number of persons subjected to harmful indoor air over long periods of time may grow; and

''Whereas, indoor air can be as much as 100 times as polluted as the air just outside, according to the Environmental Protection Agency, which estimates that indoor air pollution costs the nation tens of billions of dollars each year in lost work time, medical costs, and decreased productivity; and

''Whereas, the Environmental Protection Agency has ranked indoor air pollution as one of the top five environmental risks to human health and has classified environmental tobacco smoke as a Group A carcinogen; and

''Whereas, indoor air quality may be improved significantly by ensuring an adequate fresh air supply and maintaining ventilation rates and temperature ranges a suggested by A.S.H.R.A.E. guidelines; and

''Whereas, indoor air quality may also be improved significantly by controlling factors other than ventilation rates and levels of fresh air supply, including factors that may produce detrimental effects upon public health, such as vapors from building materials; and

''Whereas, the Occupational Safety and Health Standards Board has jurisdiction to adopt an indoor air standard that would protect the health of California workers from ''sick building syndrome,'' now, therefore be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Occupational Safety and Health Standards Board is requested to adopt an occupational safety and health standard for indoor air quality, including the elimination of environmental tobacco smoke, and the Division of Occupational Safety and Health is requested to work in consultation with representatives of labor, management, the National Institute of Occupational Safety and Health, the Environmental Protection Agency, the California Council of the American Institute of Architects, the Building Owners and Managers Association of California, the California Hotel and Motel Association, and the California Council for Interior Design Certification, and indoor air specialists to prepare a draft indoor air quality standard for presentation to the board on or before December 31, 1995; and be it further

Resolved, That the Division of Occupational Safety and Health is to coordinate with the California Building Standards Commission to ensure that the draft standard takes into account the effect of building standards on indoor air quality; and be it further.

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the Occupational Safety and Health Standards Board.''

REPORTS OF COMMITTEES

The following report of committee was submitted:

By Mr. HATCH, from the Committee on the Judiciary:

Report to accompany the joint resolution (S.J. Res. 1) proposing an amendment to the Constitution of the United States to require a balanced budget (Rept. No. 104–5).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. GRASSLEY (for himself, Mr. ROTH, Mr. DOLE, and Mr. PRYOR):

S. 262. A bill to amend the Internal Revenue Code of 1986 to increase and make permanent the deduction for health insurance costs of self-employed individuals; to the Committee on Finance.

By Mr. CAMPBELL:

S. 263. A bill to amend the Mineral Leasing Act to provide for leasing of certain lands for oil and gas purposes; to the Committee on Armed Services.

By Mr. AKAKA:

S. 264. A bill to amend the Internal Revenue Code of 1986 to adjust for inflation the dollar limitations on the dependent care credit; to the Committee on Finance.

By Mr. DOMENICI (for himself and Mr. BINGAMAN):

S. 265. A bill to amend the San Juan Basin Wilderness Protection Act of 1984 to designate additional lands as wilderness and to establish the Fossil Forest Research Natural Area, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. AKAKA:

S. 266. A bill to amend the Employee Retirement Income Security Act of 1974 with respect to the preemption of the Hawaii Prepaid Health Care Act, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. STEVENS (for himself, Mr. KERRY, Mr. GORTON, Mrs. MURRAY, and Mr. MURKOWSKI):

S. 267. A bill to establish a system of licensing, reporting, and regulation for vessels of the United States fishing on the high seas, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. BUMPERS:

S. 268. A bill to authorize the collection of fees for expenses for triploid grass carp certification inspections, and for other purposes; to the Committee on Environment and Public Works.

By Mr. DOLE (for Mr. SIMPSON):

S. 269. A bill to amend the Immigration and Nationality Act to increase control over immigration to the United States by increasing border patrol and investigator personnel; improving the verification system for employer sanctions; increasing penalties for alien smuggling and for document fraud; reforming asylum, exclusion, and deportation law and procedures; instituting a land border user fee; and to reduce use of welfare by aliens; to the Committee on the Judiciary.

By Mr. SMITH (for himself, Mr. SIMPSON, Mr. D'AMATO, Mr. COCHRAN, Mr. REID, and Mr. GREGG):

S. 270. A bill to provide special procedures for the removal of alien terrorists; to the Committee on the Judiciary.

By Mr. BROWN:

S. 271. A bill to ratify the States' right to limit congressional terms; to the Committee on Rules and Administration.

S. 272. A bill to limit congressional terms; to the Committee on Rules and Administration.

By Mr. KEMPTHORNE (for Mr. DOLE):

S. 273. A bill to amend section 61h–6, of title 2, United States Code; considered and passed.

By Mr. MCCONNELL:

S.J. Res. 23. A joint resolution proposing an amendment to the Constitution of the United States to repeal the twenty-second amendment relating to Presidential term limitations; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DOLE (for himself, Mr. DASCHLE, Mr. HELMS, Mr. PELL, Mr. D'AMATO, Mr. PACKWOOD, Mrs. BOXER, Mr. ROBB, Mr. FORD, Mrs. FEINSTEIN, Mr. WELLSTONE, Mr. SPECTER, Mr. GRASSLEY, Mr. LIEBERMAN, Mr. MCCONNELL, Mr. COHEN, and Mr. BROWN):

S. Res. 69. A resolution condemning terrorist attacks in Israel; considered and agreed to.

By Mr. KEMPTHORNE (for Mr. DOLE):

S. Res. 70. A resolution electing Doctor John Ogilvie, of California, as Chaplain of the United States Senate; considered and agreed to.

S. Res. 71. A resolution designating the Chairman of certain Senate committees for the 104th Congress; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GRASSLEY (for himself, Mr. ROTH, Mr. DOLE, and Mr. PRYOR):

S. 262. A bill to amend the Internal Revenue Code of 1986 to increase and make permanent the deduction for health insurance costs of self-employed individuals; to the Committee on Finance.

THE SELF-EMPLOYED HEALTHCARE DEDUCTION ACT OF 1995

Mr. GRASSLEY. Mr. President, today, along with Senators ROTH, DOLE, and PRYOR, I am introducing a bill to restore and increase the health care deduction for the self-employed.

Most of the major health care bills introduced in the last Congress called for an increased extension of the 25-percent health insurance deduction for the self-employed. There's a broad consensus that an increased health insurance deduction would contribute to tax fairness and would also lead to a significant reduction in the number of uninsured Americans.

Unfortunately, as we all know, the self-employed health insurance deduction expired on December 31, 1993, with the understanding that an extension, and possible expansion, would be part of health care reform in 1994. However, we all know what happened to President Clinton's disastrous health care reform effort. And, unfortunately, the self-employed deduction went down with it.

Mr. President, if the 25-percent deduction is not retroactively reinstated, the self-employed will be hit with a sizeable tax increase. Moreover, it would be a tax increase on predominantly middle-income persons, since about 73 percent of those persons who pay self-employment tax earn under $50,000 in adjusted gross income.

Mr. President, our bill will reinstate the 25-percent deduction for the 1994 tax year, and then increase the deduction to 50 percent this year, 75 percent next year, and 100 percent the year after.

Organizations as diverse as the Farm Bureau, the National Federation of

Independent Businesses, the Association for the Self-Employed, and the National Restaurant Association support this legislation.

I understand the House Ways and Means Committee will be holding a hearing this Friday on restoring this deduction, at least for 1994. I look forward to the Congress dealing with this problem in the near future for 1994, and then expanding the deduction up to 100 percent for future years.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 262

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

SECTION 1. PERMANENT EXTENSION AND INCREASE OF DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.

(a) DEDUCTION MADE PERMANENT.—Section 162(l) of the Internal Revenue Code of 1986 (relating to special rules for health insurance costs of self-employed individuals) is amended by striking paragraph (6).

(b) INCREASE IN DEDUCTION.—Section 162(l) of such Code, as amended by subsection (a), is amended—

(1) by striking ''25 percent'' in paragraph (1) and inserting ''the applicable percentage'', and

(2) by adding at the end of the following new paragraph:

''(6) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage shall be determined as follows:

For taxable years beginning in:	The applicable percentage is:
1994	25
1995	50
1996	75
1997 and thereafter	100.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1993.

By Mr. CAMPBELL:

S. 263. A bill to amend the Mineral Leasing Act to provide for leasing of certain lands for oil and gas purposes; to the Committee on Armed Services.

THE MINERAL LEASING ACT AMENDMENT ACT OF 1995

Mr. CAMPBELL. Mr. President, trapped beneath the naval oil shale reserves, two of which are located in Garfield County, CO, are billions of cubic feet of natural gas. I am sending legislation to the desk that will:

Allow the Department of the Interior and the Department of Energy to work cooperatively to establish a program to competitively lease or sell this resource;

Allow the Secretary of the Interior, acting through the Bureau of Land Management, to manage the surface of these lands pursuant to the Federal Land Policy and Management Act of 1976; and to require that a royalty be paid to the Federal treasury.

Two Executive orders, in 1916 and 1924, withdrew public lands for the purpose of establishing three naval oil shale reserves. The purpose of the reserves was to ensure the military sufficient oil from the oil shale in the event of a cutoff of oil supplies during a war.

Naval Oil Shale Reserve Nos. 1, 40,760 acres, and 3, 14,130 acres, are located in northwest Colorado near Rifle, and Naval Oil Shale Reserve No. 2, 90,400 acres, is in eastern Utah. Profitable development of shale oil currently is considered to be decades away.

The reserves are owned by the Federal Government and are operated by the Department of Energy [DOE]. Management of the reserves was transferred from the Department of the Navy to the Department of Energy by the Department of Energy Organization Act in 1977. The Department of Energy has a cooperative agreement with the Bureau of Land Management to manage the surface resources of the reserves.

Under the Naval Petroleum Reserves Production Act of 1976, the Secretary of Energy has discretionary authority to undertake certain activities, such as oil and gas development in the reserves, but only as necessary to protect, conserve, maintain, or test the reserves. Production for other purposes may take place only with the approval of the President and Congress.

The reserves located in Colorado are situated on portions of three large natural gas producing fields, the Parachute, Rulison, and Grand Valley, and are estimated to contain substantial natural gas hydrocarbons. There has been significant private natural gas drilling and extraction activity on the southern border of the third reserve since 1978. Since 1980, 277 private wells have been drilled contiguous to the boundaries of reserve Nos. 1 and 2; and through fiscal year 1992, 89 commercial producing gas wells were drilled by private industry within 1 mile of the boundary of the reserves.

The Department of Energy determined in 1983 that the potential existed for drainage of natural gas from the reserves due to the private development outside of the reserves. To prevent drainage of public resources, the Department of Energy began a protection program, drilling 35 offset and communitization wells. According to the Department of Energy's Annual Report of Operations for Fiscal Year 1992, natural gas production between fiscal years 1977 and 1992 totaled 5.4 billion cubic feet. Revenues from the reserves totaled $5 million between fiscal years 1977 and 1992; expenditures for the same period totaled $24.8 million.

This legislation does not specify what royalty should be collected. The royalty could be anywhere between 12.5 and 25 percent. The Secretary will have the discretion to decide what that royalty should be. There is no evidence, however, supporting a royalty rate at higher than 20 percent. Leases outside the reserve that mandate a royalty above this rate have not been executed. The royalty rate that is eventually chosen should reflect fair market value. It should not be set too high, discouraging development, nor too low, depriving the Government of needed revenues.

It has clearly been Congress' intent to make oil and gas leasing a profitable enterprise. It is time for the DOE to get out of the gas producing business. The Vice President's Performance Review is seeking to avoid duplication and save money. Requiring the DOE and the Department of the Interior to cooperatively lease the resources of the naval oil shale reserves will generate revenue, save money, help private industry, enrich local governments, and protect the environment.

By Mr. AKAKA:

S. 264. A bill to amend the Internal Revenue Code of 1986 to adjust for inflation the dollar limitations on the dependent care credit; to the Committee on Finance.

THE WORKING FAMILIES TAX RELIEF ACT OF 1995

● Mr. AKAKA. Mr. President, today I am introducing legislation to provide a measure of tax relief to working families throughout America. My bill would restore value to the child and dependent care credit by allowing an annual adjustment of the credit for inflation.

Mr. President, economic security is the paramount concern for millions of American families. For the first time in our Nation's history, living standards are not keeping pace with economic growth and new job creation. Median family income, after almost two decades of stagnation, is now declining. Many Americans are working harder and longer to make ends meet for their families.

The availability and affordability of adequate child care is an increasingly important consideration for many middle-income working parents. Many families are forced to patch together a network of child care providers to secure care for their children. My legislation responds to the critical need for affordable, quality child-care services without creating costly new Government programs or agencies. It is a simple, flexible solution that will reestablish the full benefit of the child and dependent care credit for millions of working families.

The evidence in support of improving the child and dependent care credit is clear. The number of single mothers working outside the home has dramatically increased in recent years. More than 56 percent of all mothers with children under 6 years work outside the home, and over 70 percent of women with children over age 6 are in the labor market.

The percentage of Hawaii households in which both parents work outside the home is even higher than the national average. According to projections developed by the Bank of Hawaii based on the 1990 census, 61.8 percent of all Hawaii families have both parents employed, and 71.3 percent of all households have at least two individuals in the work force.

The increased participation of single mothers in the labor market and the large number of two-parent families in which both parents work outside the home have made the dependent care credit one of the most popular and productive tax incentives ever enacted by Congress. Unfortunately, the value of the credit has declined significantly over the years as inflation has slowly eroded the value of this benefit. Measured in constant dollars, the maximum credit of $2,400 has decreased in value by more than 45 percent since it was enacted in 1981.

The maximum amount of employment-related child care expenses allowed under current law—$2,400 for a single child, and $4,800 for two or more children—has simply failed to keep pace with escalating care costs. Unlike the earned income tax credit [EITC], the standard deduction, the low-income housing credit, and a number of other sections of our Tax Code, the dependent care credit is not adjusted for inflation.

The purpose of this credit is to partially offset the expense of dependent and child care services incurred by parents working outside the home. While the cost of quality child care has increased as demand exceeds supply, the dependent care credit has failed to keep up with the spiraling costs. The bill I introduce today corrects this problem by automatically adjusting the dependent and child care credit for inflation. Under this legislation, both the dollar limit on the amount creditable and the limitation on earned income would be adjusted annually.

Mr. President, in the past 12 years, the average middle-class family with children has seen its income fall 5 percent, almost $1,600 after inflation. A family of four earning $35,000 a year has seen its tax burden increase since 1981. In part, this is due to the diminished value of the child and dependent care credit. In 1981, the flat credit for dependent care was replaced with a scale to give the greatest benefit of the credit to lower income working families. Since that time, neither the adjusted gross income figures employed in the scale, nor the limit on the amount of employment-related expenses used to calculate the credit, has been adjusted for inflation. Our bill provides a measure of much needed relief to working American families. It would index the child and dependent care credit and restore the full benefit of the credit.

The average cost for out of home child care exceeds $3,500 per child, per year. Child care or dependent care expenses can seriously strain a family's budget. This burden can become unbearable for single parents, almost invariably single mothers, who must balance the need to work with their parental responsibilities.

Numerous economic studies have shown that the economic policies of the 1980's had a disastrous impact upon the incomes of middle-income families. Inflation adjusted wages for the median worker fell 7.3 percent from 1979 to 1991. Working Americans have been losing ground in their struggle to preserve their standard of living. To compensate, American families have been forced to work longer hours, deplete their life savings, and go deeper into debt. There is an urgent need to enact changes in our Tax Code that are pro-family and pro-children. The Working Families Tax Relief Act meets both of these goals.

Mr. President, I ask unanimous consent that the text of the bill be included in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 264

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Working Families Tax Relief Act''.

SEC. 2. INFLATION ADJUSTMENT OF DEPENDENT CARE CREDIT.

(a) IN GENERAL.—Subsection (e) of section 21 of the Internal Revenue Code of 1986 (relating to expenses for household and dependent care services necessary for gainful employment) is amended by adding at the end the following new paragraph:

''(10) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 1995, each dollar amount contained in subsections (c) and (d)(2) shall be increased by an amount equal to—

''(A) such dollar amount, multiplied by

''(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting 'calendar year 1994' for 'calendar year 1992' in subparagraph (B) thereof.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1995.●

By Mr. DOMENICI (for himself and Mr. BINGAMAN):

S. 265. A bill to amend the San Juan Basin Wilderness Protection Act of 1984 to designate additional lands as wilderness and to establish the Fossil Research Natural Area, and for other purposes; to the Committee on Energy and Natural Resources.

THE BISTI AND DE-NA-ZIN WILDERNESS EXPANSION AND FOSSIL FOREST PROTECTION ACT

● Mr. DOMENICI. Mr. President, I introduce legislation that will amend the San Juan Wilderness Protection Act of 1984. This legislation will combine two existing wilderness areas in New Mexico, designate additional lands as wilderness, and establish the Fossil Forest Research Natural Area.

In December 1991, approximately 10,750 acres between the Bisti and the De-Na-Zin Wilderness Areas were transferred by exchange to the Bureau of Land Management, with the Bureau of Indian Affairs acting in trust for the Navajo Nation. These newly acquired lands are immediately adjacent to the existing boundaries of the Bisti and De-Na-Zin Wilderness areas and are of high wilderness quality. The area appears to have been affected primarily by the forces of nature with the imprint of human activity substantially unnoticeable.

The acquired lands are included in the approximately 16,674 acres that will be designated by this legislation as wilderness, and join the Bisti and De-Na-Zin into one wilderness area. This bill includes additional lands that will require further exchanges with the State of New Mexico and the Navajo Tribe. Both parties indicate that they are willing to enter into agreements to consummate the exchange of lands.

The joining of the Bisti and De-Na-Zin Wilderness Areas will enhance the wilderness experience for visitors and help ensure continued protection of this resource for future generations of Americans. The two wilderness areas previously designated and the expansion area will be combined into one wilderness area with more manageable boundaries. The joint wilderness area will include a large, striking, and open natural landscape.

The scenic badlands that dominate this area provide an outstanding opportunity for solitude as well as activities such as hiking, backpacking, photography and geological sightseeing in an unconfined and primitive environment. The badlands topography of the expanded area naturally bridge the two wilderness areas into one picturesque expanse with a variety of rich colors and landform.

The establishment of the Fossil Forest Research Natural Area, named for the abundant petrified tree stumps and logs which lie exposed on its surface, provide a wealth of data and fossil material that are found within the Fossil Forest. Many of these stumps are preserved in place with root systems still intact. Four major dinosaur bone quarries and several microvertebrate and invertebrate localities have been excavated over the past decade, including a critically important Cretaceous Age—75 million years ago—mammal quarry. The occurrence of this diverse assemblage of fossil fauna and flora provides a unique opportunity to peek through a small window of time, 70 to 80 million years ago, to examine an important episode of geological and biological change.

Mr. President, I urge the Senate to move rapidly on this important legislation in an effort to enhance the National Wilderness Preservation System and to conserve a unique paleontological area that represents an important period of time and space in our country's natural history.●

By Mr. AKAKA:

S. 266. A bill to amend the Employee Retirement Income Security Act of 1974 with respect to the preemption of the Hawaii Prepaid Health Care Act, and for other purposes; to the Committee on Labor and Human Resources.

THE HAWAII PREPAID HEALTH CARE EXEMPTION ACT

● Mr. AKAKA. Mr. President, I reintroduce legislation to exclude the Hawaii

Prepaid Health Care Act from the Employee Retirement Income Security Act of 1974, known as ERISA.

As we have witnessed during the opening weeks of the session, reinventing Government will be a major legislative theme for the 104th Congress. In the months ahead, Congress will examine unnecessary restrictions that the Federal Government imposes on States.

Hawaii's experience with ERISA is an excellent example of a Federal restriction that should be curtailed so the State can improve access to affordable health care. ERISA is the major constraint on Hawaii's ability to improve health care coverage. My bill would give the State the flexibility it needs to find creative and cost-effective ways of delivering high-quality health care.

Ensuring that all Americans will have access to affordable health care is the most profound challenge facing our country. As the cost of providing care is growing at an alarming rate, the number of uninsured or underinsured individuals continues to rise.

State governments have a major stake in financing and providing health care. A growing portion of State budgets are devoted to health care. But budgetary problems are not the only constraints facing the States. Federal laws and regulations often conspire to make health care more expensive or less universal. A case in point is the State of Hawaii's experience with the Hawaii Prepaid Health Care Act and ERISA.

In 1974, Hawaii became the first State to require employers and employees to share responsibility for the cost of health insurance when it enacted the Prepaid Health Care Act [PPHCA]. By dramatically reducing the number of uninsured, this measure allowed Hawaii to implement a system of near-universal health care coverage.

In a 1980 decision, the Ninth Circuit Court of Appeals held that ERISA preempts the State from enacting minimum health care requirements for employers governed by ERISA. The court determined that in the absence of an expressed exemption for the Hawaii statute, Federal law governs. The U.S. Supreme Court affirmed the lower court ruling, and concluded that relief could come only from Congress.

Soon thereafter, I sponsored legislation to grant an exemption for the Hawaii statute. After considerable congressional debate, a limited ERISA exemption was signed into law on January 14, 1983. However, the exemption was not prospective, and only permitted Hawaii to require the specific benefits set forth in the State's 1974 statute.

An unfortunate consequence of these events is that the Hawaii Prepaid Health Care Act has been frozen in time, and the State is prevented from making changes other than those that would enhance effective administration.

In recognition of Hawaii's determined effort to provide universal health care, my bill would exempt the State's prepaid health care act from restrictions contained in ERISA. Such an exemption would give Hawaii greater flexibility to improve both the quality and scope of health coverage for working men and women and their families. Among other things, the State could reevaluate the employer-employee cost sharing levels, examine the feasibility of requiring dependent coverage, and explore measures to assist businesses in providing health benefits.

Since 1974, Hawaii has had a mandated employer health benefits program, the first and only one of its kind in the United States. Nearly all of Hawaii's employers are required to provide employee health insurance, with the employee paying up to half the premium cost, but no more than 1.5 percent of monthly wages, and the employer providing the balance. Eligible employees must work at least 20 hours a week. Employers may offer one or two basic plans—a fee-for-service plan or a designated health maintenance organization plan.

The results of Hawaii's innovative approach are impressive. Hawaii has led the Nation in ensuring that basic health care is available to all its people. This system delivers high-quality care at relatively low cost, despite a cost of living that is 30 to 40 percent higher than the rest of the country.

Of all the States, Hawaii is the closest to achieving universal health care coverage. The Hawaii State Department of Health estimates that between 2 and 4 percent of Hawaii's residents lack health insurance. This compares with national estimates that between 14 and 17 percent of U.S. residents are not covered.

Today, Hawaii has one of the lowest infant mortality rates and one of the highest life expectancy rates in the Nation. Although the incidence of chronic diseases, such as cancer and heart disease, is similar to that of other States, the death rates from these diseases are lower. The substantial investment Hawaii has made in the prepaid health care law has clearly paid off.

Yet, there is an urgent need to bring the State statute up to date. We need to allow a State that has been at the forefront of innovative approaches to health care to make changes which better reflect the needs of today's population and their employers. Hawaii should not have to resort to back-door approaches in order to ensure basic health care to its citizens. My legislation will permit the State to address these issues and upgrade its successful health care programs for the 1990's and beyond.

Although we must continue the quest for national health care reform, we should not allow a dynamic State like Hawaii to remain hobbled by Federal limitations on a truly innovative program with a proven record of success.

I urge my colleagues to support this bill, and I ask unanimous consent that it be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 266

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

SECTION 1. PREEMPTION OF HAWAII PREPAID HEALTH CARE ACT.

Section 514(b)(5) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(b)(5)) is amended to read as follows:

''(5)(A) Except as provided in subparagraphs (B) and (C), subsection (a) shall not apply to the Hawaii Prepaid Health Care Act (Haw. Rev. Stat. Chapter 393, as amended) or any insurance law of the State.

''(B) Nothing in subparagraph (A) shall be construed to exempt from subsection (a) any State tax law relating to employee benefits plans.

''(C) If the Secretary of Labor notifies the Governor of the State of Hawaii that as the result of an amendment to the Hawaii Prepaid Health Care Act enacted after the date of the enactment of this paragraph—

''(i) the proportion of the population with health care coverage under such Act is less than such proportion on such date, or

''(ii) the level of benefit coverage provided under such Act is less than the actuarial equivalent of such level of coverage, on such date,

subparagraph (A) shall not apply with respect to the application of such amendment to such Act after the date of such notification.''.●

By Mr. STEVENS (for himself, Mr. KERRY, Mr. GORTON, Mrs. MURRAY, and Mr. MURKOWSKI):

S. 267. A bill to establish a system of licensing, reporting, and regulation for vessels of the United States fishing on the high seas, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE FISHERIES ACT OF 1995

● Mr. STEVENS. Mr. President, I am pleased to introduce a bill which contains a number of provisions important to the conservation of fishery resources on the high seas.

Senators KERRY, GORTON, MURRAY, and MURKOWSKI join me in introducing this package today, which is titled, the ''Fisheries Act of 1995.''

The High Seas Fisheries Licensing Act of 1995, title I of the bill, would provide for the domestic implementation of the agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas.

This agreement was adopted by the U.N. Food and Agriculture Organization in 1993.

The implementing legislation would establish a system of licensing, reporting, and regulation for all U.S. vessels fishing on the high seas.

It will set an example for other nations to the agreement to follow, and will begin to allow the United States to obtain information from other countries about their fishing vessels on the high seas.

The Northwest Atlantic Fisheries Convention Act, title II of the bill, would implement the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries.

This convention calls for establishment of the Northwest Atlantic Fisheries Organization [NAFO] to assess and conserve high seas fishery resources off the coasts of Canada and New England.

Among other provisions, this title of the bill would provide for: First, U.S. representation in NAFO; second, coordination between NAFO and appropriate regional fishery management councils; and third, authorization for the Secretaries of Commerce and State to carry out U.S. responsibilities under the convention.

Title III of the bill would extend the authorization of appropriations for the Atlantic Tunas Convention Act through fiscal year 1998.

It would also: First, provide for the development of a research and monitoring program for bluefin tuna and other wideranging Atlantic fish stocks; second, establish operating procedures for the International Commission for the Conservation of Atlantic Tunas [ICCAT] Advisory Committee; and third, clarify procedures for dealing with nations that fail to comply with ICCAT recommendations.

Title IV of the bill would reauthorize and amend the Fishermen's Protective Act of 1967 to allow the Secretary of State to reimburse U.S. fishermen forced to pay transit passage fees required by a foreign country that are regarded by the United States as inconsistent with international law.

Similar legislation was passed in both the Senate and House last year in response to the $1,500, in Canadian dollars, transit fee charged to United States fishermen last year for passage off British Columbia.

Title V of the bill would prohibit United States fishermen from fishing in the Central Sea of Okhotsk, known as the ''Peanut Hole'', except where such fishing is conducted in accordance with a fishery agreement to which both the United States and Russia are parties.

This provision is intended to provide assistance to Russia in conserving the fish stocks in the Sea of Okhotsk, which is bordered by Russian waters.

Title VI would prohibit the United States from entering into any international agreement with respect to the conservation and management of living marine resources or the use of the high seas by fishing vessels that would prevent full implementation of the U.N. global moratorium on large-scale driftnet fishing.

The intent is to ensure that the United States takes every opportunity to assist in the full implementation—and to strengthen where possible—the U.N. moratorium on driftnet fishing.

The final section of the bill, title VII, authorizes the entry into force of a Governing International Fishery Agreement [GIFA] between the United States and the Republic of Estonia.

I would like to thank Senator KERRY for his help in putting this package together.

This is a noncontroversial bill with bipartisan support, and I hope my colleagues on the Commerce Committee and in the full Senate will support its speedy passage.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

S. 267

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Fisheries Act of 1995''.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

TITLE I—HIGH SEAS FISHERIES LICENSING

SEC. 101. SHORT TITLE.

This title may be cited as the ''High Seas Fisheries Licensing Act of 1995''.

SEC. 102. PURPOSE.

It is the purpose of this Act—

(1) to implement the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, adopted by the Conference of the Food and Agriculture Organization of the United Nations on November 24, 1993; and

(2) to establish a system of licensing, reporting, and regulation for vessels of the United States fishing on the high seas.

SEC. 103. DEFINITIONS.

As used in this Act—

(1) The term ''Agreement'' means the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, adopted by the Conference of the Food and Agriculture Organization of the United Nations on November 24, 1993.

(2) The term ''FAO'' means the Food and Agriculture Organization of the United Nations.

(3) The term ''high seas'' means the waters beyond the territorial sea or exclusive economic zone (or the equivalent) of any nation, to the extent that such territorial sea or exclusive economic zone (or the equivalent) is recognized by the United States.

(4) The term ''high seas fishing vessel'' means any vessel of the United States used or intended for use—

(A) on the high seas;

(B) for the purpose of the commercial exploitation of living marine resources; and

(C) as a harvesting vessel, as a mother ship, or as any other support vessel directly engaged in a fishing operation.

(5) The term ''international conservation and management measures'' means measures to conserve or manage one or more species of living marine resources that are adopted and applied in accordance with the relevant rules of international law, as reflected in the 1982 United Nations Convention on the Law of the Sea, and that are recognized by the United States. Such measures may be adopted by global, regional, or sub-regional fisheries organizations, subject to the rights and obligations of their members, or by treaties or other international agreements.

(6) The term ''length'' means—

(A) for any high seas fishing vessel built after July 18, 1982, 96 percent of the total length on a waterline at 85 percent of the least molded depth measured from the top of the keel, or the length from the foreside of the stem to the axis of the rudder stock on that waterline, if that is greater. In ships designed with a rake of keel the waterline on which this length is measured shall be parallel to the designed waterline; and

(B) for any high seas fishing vessel built before July 18, 1982, registered length as entered on the vessel's documentation.

(7) 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.

(8) The term ''Secretary'' means the Secretary of Commerce.

(9) The term ''vessel of the United States'' means—

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

(B) a vessel owned in whole or part by—

(i) the United States or a territory, commonwealth, or possession of the United States;

(ii) a State or political subdivision thereof;

(iii) a citizen or national of the United States; or

(vi) a corporation created under the laws of the United States or any State, the District of Columbia, or any territory, commonwealth, or possession of the United States; unless the vessel has been granted the nationality of a foreign nation in accordance with article 92 of the 1982 United Nations Convention on the Law of the Sea and a claim of nationality or registry for the vessel is made by the master or individial in charge at the time of the enforcement action by an officer or employee of the United States authorized to enforce applicable provisions of the United States law; and

(C) a vessel that was once documented under the laws of the United States and, in violation of the laws of the United States, was either sold to a person not a citizen of the United States or placed under foreign registry or a foreign flag, whether or not the vessel has been granted the nationality of a foreign nation.

(10) The terms ''vessel subject to the jurisdiction of the United States'' and ''vessel without nationality'' have the same meaning as in section 1903(c) of title 46, United States Code Appendix.

SEC. 104. LICENSING.

(a) IN GENERAL.—No high seas fishing vessel shall engage in harvesting operations on the high seas unless the vessel has on board a valid license issued under this section.

(b) ELIGIBILITY.—

(1) Any vessel of the United States is eligible to receive a license under this section, unless the vessel was previously authorized to be used for fishing on the high seas by a foreign nation, and

(A) the foreign nation suspended such authorization because the vessel undermined the effectiveness of international conservation and management measures, and the suspension has not expired; or

(B) the foreign nation, within the last three years preceding application for a license under this section, withdrew such authorization because the vessel undermined the effectiveness of international conservation and management measures.

(2) The restriction in paragraph (1) does not apply if ownership of the vessel has changed since the vessel undermined the effectiveness of international conservation and management measures, and the new owner has provided sufficient evidence to the Secretary demonstarting that the previous owner or operator has no further legal, beneficial or financial interest in, or control of, the vessel.

(3) The restriction in paragraph (1) does not apply if the Secretary makes a determination that issuing a license would not subvert the purposes of the Agreement.

(4) The Secretary may not issue a license to a vessel unless the Secretary is satisified that the United States will be able to exercise effectively its responsibilities under the Agreement with respect to that vessel.

(c) APPLICATION.—

(1) The owner or operator of a high seas fishing vessel may apply for a license under this section by completing an application form prescribed by the Secretary.

(2) The application form shall contain—

(A) the vessel's name, previous names (if known), official numbers, and port of record;

(B) the vessel's previous flags (if any);

(C) the vessel's International Radio Call Sign (if any);

(D) the names and addresses of the vessel's owners and operators;

(E) where and when the vessel was built;

(F) the type of vessel;

(G) the vessel's length; and

(H) any other information the Secretary requires for the purposes of implementing the Agreement.

(d) CONDITIONS.—The Secretary shall establish such conditions and restrictions on each license issued under this section as are necessary and appropriate to carry out the obligations of the United States Under the Agreement, including but not limited to the following:

(1) The vessel shall be marked in accordance with the FAO Standard Specifications for the Marking and Identification of Fishing Vessels, or with regulations issued under section 305 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1855); and

(2) The license holder shall report such information as the Secretary by regulation requires, including area of fishing operations and catch statistics. The Secretary shall promulgate regulations concerning conditions under which information submitted under this paragraph may be released.

(e) Fees.—

(1) The Secretary shall by regulation establish the level of fees to be charged for licenses issued under this section. The amount of any fee charged for a license issued under this section shall not exceed the administrative costs incurred in issuing such licenses. The licensing fee may be in addition to any fee required under any regional licensing regime applicable to high seas fishing vessels.

(2) The fees authorized by paragraph (1) shall be collected and credited to the Operations, Research and Facilities account of the National Oceanic and Atmospheric Administration. Fees collected under this subsection shall be available for the necessary expenses of the National Oceanic and Atmospheric Administration in implementing this Act, and shall remain available until expended.

(f) DURATION.—A license issued under this section is valid for 5 years. A license issued under this section is void in the event the vessel is no longer eligible for United States documentation, such documentation is revoked or denied, or the vessel is deleted from such documentation.

SEC. 105. RESPONSIBILITIES OF THE SECRETARY.

(a) RECORD.—The Secretary shall maintain an automated file or record of high seas fishing vessels issued licenses under section 104, including all information submitted under section 104(c)(2).

(b) INFORMATION TO FAO.—The Secretary, in cooperation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall—

(1) make available to FAO information contained in the record maintained under subsection (a);

(2) promptly notify FAO of changes in such information;

(3) promptly notify FAO of additions to or deletions from the record, and the reason for any deletion;

(4) convey to FAO information relating to any license granted under section 104(b)(3), including the vessel's identity, owner or operator, and factors relevant to the Secretary's determination to issue the license;

(5) report promptly to FAO all relevant information regarding any activities of high seas fishing vessels that undermine the effectiveness of international conservation and management measures, including the identity of the vessels and any sanctions imposed; and

(6) provide the FAO a summary of evidence regarding any activities of foreign vessels that undermine the effectiveness of international conservation and management measures.

(c) INFORMATION TO FLAG NATIONS.—If the Secretary, in cooperation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, has reasonable grounds to believe that a foreign vessel has engaged in activities undermining the effectiveness of international conservation and management measures, the Secretary shall—

(1) provide to the flag nation information, including appropriate evidentiary material, relating to those activities; and

(2) when such foreign vessel is voluntarily in a United States port, promptly notify the flag nation and, if requested by the flag nation, make arrangements to undertake such lawful investigatory measures as may be considered necessary to establish whether the vessel has been used contrary to the provisions of the Agreement.

(d) REGULATIONS.—The Secretary, after consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, may promulgate such regulations, in accordance with section 553 of title 5, United States Code, as may be necessary to carry out the purposes of the Agreement and this title. The Secretary shall coordinate such regulations with any other entities regulating high seas fishing vessels, in order to minimize duplication of license application and reporting requirements. To the extent practicable, such regulations shall also be consistent with regulations implementing fishery management plans under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(e) NOTICE OF INTERNATIONAL CONSERVATION AND MANAGEMENT MEASURES.—The Secretary, in consultation with the Secretary of State, shall publish in the Federal Register, from time to time, a notice listing international conservation and management measures recognized by the United States.

SEC. 106. UNLAWFUL ACTIVITIES.

It is unlawful for any person subject to the jurisdiction of the United States—

(1) to use a high seas fishing vessel on the high seas in contravention of international conservation and management measures described in section 105(e);

(2) to use a high seas fishing vessel on the high seas, unless the vessel has on board a valid license issued under section 104;

(3) to use a high seas fishing vessel in violation of the conditions or restrictions of a license issued under section 104;

(4) to falsify any information required to be reported, communicated, or recorded pursuant to this title or any regulation issued under this title, or to fail to submit in a timely fashion any required information, or to fail to report to the Secretary immediately any change in circumstances that has the effect of rendering any such information false, incomplete, or misleading;

(5) to refuse to permit an authorized officer to board a high seas fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this title or any regulation issued under this title;

(6) to forcibly assault, resist, oppose, impede, intimidate, or interfere with an authorized officer in the conduct of any search or inspection described in paragraph (5);

(7) to resist a lawful arrest or detention for any act prohibited by this section;

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

(9) to ship, transport, offer for sale, sell, purchase, import, export, or have custody,

control, or possession of, any living marine resource taken or retained in violation of this title or any regulation or license issued under this title; or

(10) to violate any provision of this title or any regulation or license issued under this title.

SEC. 107. ENFORCEMENT PROVISIONS.

(a) DUTIES OF SECRETARIES.—This title shall be enforced by the Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating. Such Secretaries may by agreement utilize, on a reimbursable basis or otherwise, the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency, or of any State agency, in the performance of such duties. Such Secretaries shall, and the head of any Federal or State agency that has entered into an agreement with either such Secretary under this section may (if the agreement so provides), authorize officers to enforce the provisions of this title or any regulation or license issued under this title.

(b) DISTRICT COURT JURISDICTION.—The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this title. In the case of Guam, and any Commonwealth, territory, or possession of the United States in the Pacific Ocean, the appropriate court is the United States District Court for the District of Guam, except that in the case of American Samoa, the appropriate court is the United States District Court for the District of Hawaii.

(c) POWERS OF ENFORCEMENT OFFICERS.—

(1) Any officer who is authorized under subsection (a) to enforce the provisions of this title may—

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

(i) arrest any person, if the officer has reasonable cause to believe that such person has committed an act prohibited by paragraph (6), (7), (8), or (9) of section 106;

(ii) board, and search or inspect, any high seas fishing vessel;

(iii) seize any high seas fishing vessel (together with its fishing gear, furniture, appurtenances, stores, and cargo) used or employed in, or with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of this title or any regulation or license issued under this title;

(iv) seize any living marine resource (wherever found) taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 106;

(v) seize any other evidence related to any violation of any provision of this title or any regulation or license issued under this title;

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

(C) exercise any other lawful authority.

(2) Subject to the direction of the Secretary, a person charged with law enforcement responsibilities by the Secretary who is performing a duty related to enforcement of a law regarding fisheries or other marine resources may make an arrest without a warrant for an offense against the United States committed in his presence, or for a felony cognizable under the laws of the United States, if he has reasonable grounds to believe that the person to be arrested has committed or is committing a felony.

(d) ISSUANCE OF CITATIONS.—If any authorized officer finds that a high seas fishing vessel is operating or has been operated in violation of any provision of this title, such officer may issue a citation to the owner or operator of such vessel in lieu of proceeding under subsection (c). If a permit has been issued pursuant to this title for such vessel, such officer shall note the issuance of any citation under this subsection, including the date thereof and the reason therefor, on the permit. The Secretary shall maintain a record of all citations issued pursuant to this subsection.

(e) LIABILITY FOR COSTS.—Any person assessed a civil penalty for, or convicted of, any violation of this Act shall be liable for the cost incurred in storage, care, and maintenance of any living marine resource or other property seized in connection with the violation.

SEC. 108. CIVIL PENALTIES AND LICENSE SANCTIONS.

(a) CIVIL PENALTIES.—

(1) Any person who is found by the Secretary, after notice and opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 106 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed $100,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violation, the degree of culpability, any history of prior offenses, and such other matters as justice may require.

(2) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty that is subject to imposition or that has been imposed under this section.

(b) LICENSE SANCTIONS.—

(1) In any case in which—

(A) a vessel of the United States has been used in the commission of an act prohibited under section 106;

(B) the owner or operator of a vessel or any other person who has been issued or has applied for a license under section 104 has acted in violation of section 106; or

(C) any amount in settlement of a civil forfeiture imposed on a high seas fishing vessel or other property, or any civil penalty or criminal fine imposed on a high seas fishing vessel or on an owner or operator of such a vessel or on any other person who has been issued or has applied for a license under any fishery resource statute enforced by the Secretary, has not been paid and is overdue, the Secretary may—

(i) revoke any license issued to or applied for by such vessel or person under this title, with or without prejudice to the issuance of subsequent licenses;

(ii) suspend such license for a period of time considered by the Secretary to be appropriate;

(iii) deny such license; or

(iv) impose additional conditions and restrictions on such license.

(2) In imposing a sanction under this subsection, the Secretary shall take into account—

(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and

(B) with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require.

(3) Transfer of ownership of a high seas fishing vessel, by sale or otherwise, shall not extinguish any license sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any license sanction that will be in effect or pending with respect to the vessel at the time of the transfer. The Secretary may waive or compromise a sanction in the case of a transfer pursuant to court order.

(4) In the case of any license that is suspended under this subsection for nonpayment of a civil penalty or criminal fine, the Secretary shall reinstate the license upon payment of the penalty or fine and interest thereon at the prevailing rate.

(5) No sanctions shall be imposed under this subsection unless there has been prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this section or otherwise.

(c) HEARING.—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 any person pursuant to this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such 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 such order of the court may be punished by such court as a contempt thereof.

(d) JUDICIAL REVIEW.—Any person against whom a civil penalty is assessed under subsection (a) or against whose vessel a license sanction is imposed under subsection (b) (other than a license suspension for nonpayment of penalty or fine) may obtain review thereof in the United States district court for the appropriate district by filing a complaint against the Secretary in such court within 30 days from the date of such penalty or sanction. The Secretary shall promptly file in such court a certified copy of the record upon which such penalty or sanction was imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(e) COLLECTION.—

(1) 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 matter shall be referred to the Attorney General, who shall recover the amount assessed in any appropriate district court of the United States. In such action the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(2) A high seas fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used in the commission of an act prohibited by section 106 shall be liable in rem for any civil penalty assessed for such violation under subsection (a) and may be proceeded against in any district court of the United States having jurisdiction thereof. Such penalty shall constitute a maritime lien on such vessel that may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.

SEC. 109. CRIMINAL OFFENSES.

(a) OFFENSES.—A person is guilty of an offense if the person commits any act prohibited by paragraph (6), (7), (8), or (9) of section 106.

(b) PUNISHMENT.—Any offense described in subsection (a) is a class A misdemeanor punishable by a fine under title 18, United States Code, or imprisonment for not more than one year, or both; except that if in the commission of any offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any authorized officer, or places any such officer in fear of imminent bodily injury, the offense is a felony punishable by a fine under title 18, United States Code, or imprisonment for not more than 10 years, or both.

SEC. 110. FORFEITURES.

(a) IN GENERAL.—Any high seas fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any living marine resources (or the fair market value thereof) taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 106 (other than an act for which the issuance of a citation under section 107 is a sufficient sanction) shall be subject to forfeiture to the United States. All or part of such vessel may, and all such living marine resources (or the fair market value thereof) shall, be forfeited to the United States pursuant to a civil proceeding under this section.

(b) JURISDICTION OF DISTRICT COURTS.—Any district court of the United States shall have jurisdiction, upon application of the Attorney General on behalf of the United States, to order any forfeiture authorized under subsection (a) and any action provided for under subsection (d).

(c) JUDGMENT.—If a judgment is entered for the United States in a civil forfeiture proceeding under this section, the Attorney General may seize any property or other interest declared forfeited to the United States, which has not previously been seized pursuant to this title or for which security has not previously been obtained. The provisions of the customs laws relating to—

(1) the seizure, forfeiture, and condemnation of property for violation of the customs law;

(2) the disposition of such property or the proceeds from the sale thereof; and

(3) the remission or mitigation of any such forfeiture;

shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this title, unless such provisions are inconsistent with the purposes, policy, and provisions of this title.

(d) PROCEDURE.—

(1) Any officer authorized to serve any process in rem that is issued by a court under section 107(b) shall—

(A) stay the execution of such process; or

(B) discharge any living marine resources seized pursuant to such process;

upon receipt of a satisfactory bond or other security from any person claiming such property. Such bond or other security shall be conditioned upon such person delivering such property to the appropriate court upon order thereof, without any impairment of its value, or paying the monetary value of such property pursuant to an order of such court. Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court.

(2) Any living marine resources seized pursuant to this title may be sold, subject to the approval of the appropriate court, for not less than the fair market value thereof. The proceeds of any such sale shall be deposited with such court pending the disposition of the matter involved.

(e) REBUTTABLE PRESUMPTION.—For purposes of this section, all living marine resources found on board a high seas fishing vessel and which are seized in connection with an act prohibited by section 106 are presumed to have been taken or retained in violation of this title, but the presumption can be rebutted by an appropriate showing of evidence to the contrary.

SEC. 111. EFFECTIVE DATE.

This title shall take effect 120 days after the date of enactment of this Act.

TITLE II—IMPLEMENTATION OF CONVENTION ON FUTURE MULTILATERAL COOPERATION IN THE NORTHWEST ATLANTIC FISHERIES

SEC. 201. SHORT TITLE.

This title may be cited as the ''Northwest Atlantic Fisheries Convention Act of 1995''.

SEC. 202. REPRESENTATION OF UNITED STATES UNDER CONVENTION.

(a) COMMISSIONERS.—

(1) APPOINTMENTS, GENERALLY.—The Secretary shall appoint not more than 3 individuals to serve as the representatives of the United States on the General Council and the Fisheries Commission, who shall each—

(A) be known as a ''United States Commissioner to the Northwest Atlantic Fisheries Organization''; and

(B) serve at the pleasure of the Secretary.

(2) REQUIREMENTS FOR APPOINTMENTS.—

(A) The Secretary shall ensure that of the individuals serving as Commissioners—

(i) at least 1 is appointed from among representatives of the commercial fishing industry;

(ii) 1 (but no more than 1) is an official of the Government; and

(iii) 1, other than the individual appointed under clause (ii), is a voting member of the New England Fishery Management Council.

(B) The Secretary may not appoint as a Commissioner an individual unless the individual is knowledgeable and experience concerning the fishery resources to which the Convention applies.

(3) TERMS.—

(A) The term of an individual appointed as a Commissioner—

(i) shall be specified by the Secretary at the time of appointment; and

(ii) may not exceed 4 years.

(B) An individual who is not a Government official may not serve more than 2 consecutive terms as a Commissioner.

(b) ALTERNATE COMMISSIONERS.—

(1) APPOINTMENT.—The Secretary may, for any anticipated absence of a duly appointed Commissioner at a meeting of the General Council or the Fisheries Commission, designate an individual to serve as an Alternate Commissioner.

(2) FUNCTIONS.—An Alternate Commissioner may exercise all powers and perform all duties of the Commissioner for whom the Alternate Commissioner is designated, at any meeting of the General Council or the Fisheries Commission for which the Alternate Commissioner is designated.

(c) REPRESENTATIVES.—

(1) APPOINTMENT.—The Secretary shall appoint not more than 3 individuals to serve as the representatives of the United States on the Scientific Council, who shall each be known as a ''United State Representative to the Northwest Atlantic Fisheries Organization Scientific Council''.

(2) ELIGIBILITY FOR APPOINTMENT.—

(A) The Secretary may not appoint an individual as a Representative unless the individual is knowledgeable and experienced concerning the scientific issues dealt with by the Scientific Council.

(B) The Secretary shall appoint as a Representative at least 1 individual who is an official of the Government.

(3) TERM.—An individual appointed as a Representative—

(A) shall serve for a term of not to exceed 4 years, as specific by the Secretary at the time of appointment;

(B) may be reappointed; and

(C) shall serve at the pleasure of the Secretary.

(d) ALTERNATE REPRESENTATIVES.—

(1) APPOINTMENT.—The Secretary may, for any anticipated absence of a duly appointed Representative at a meeting of the Scientific Council, designate an individual to serve as an Alternate Representative.

(2) FUNCTIONS.—An Alternate Representative may exercise all powers and perform all duties of the Representative for whom the Alternate Representative is designated, at any meeting of the Scientific Council for which the Alternate Representative is designated.

(e) EXPERTS AND ADVISERS.—The Commissioners, Alternate Commissioners, Representatives, and Alternate Representatives may be accompanied at meeting of the Organization by experts and advisers.

(f) COORDINATION AND CONSULTATION.—

(1) IN GENERAL.—In carrying out their functions under the Convention, Commissioners, Alternate Commissioners, Representatives, and Alternate Representatives shall—

(A) coordinate with the appropriate Regional Fishery Management Councils established by section 302 of the Magnuson Act (16 U.S.C. 1852); and

(B) consult with the committee established under section 208.

(2) RELATIONSHIP TO OTHER LAW.—The Federal Advisory Committee Act (5 U.S.C. App. §1 et seq.) shall not apply to coordination and consultations under this subsection.

SEC. 203. REQUESTS FOR SCIENTIFIC ADVICE.

(a) RESTRICTION.—The Representatives may not make a request or specification described in subsection (b)(1) or (2), respectively, unless the Representatives have first—

(1) consulted with the appropriate Regional Fishery Management Councils; and

(2) received the consent of the Commissioners for that action.

(b) REQUESTS AND TERMS OF REFERENCE DESCRIBED.—The requests and specifications referred to in subsection (a) are, respectively—

(1) any request, under Article VII(1) of the Convention, that the Scientific Council consider and report on a question pertaining to the scientific basis for the management and conservation of fishery resources in waters under the jurisdiction of the United States within the Convention Area; and

(2) any specification, under Article VIII(2) of the Convention, of the terms of reference for the consideration of a question referred to the Scientific Council pursuant to Article VII(1) of the Convention.

SEC. 204. AUTHORITIES OF SECRETARY OF STATE WITH RESPECT TO CONVENTION.

The Secretary of State may, on behalf of the Government of the United States—

(1) receive and transmit reports, requests, recommendations, proposals, and other communications of and to the Organization and its subsidiary organs;

(2) object, or withdraw an objection, to the proposal of the Fisheries Commission;

(3) give or withdraw notice of intent not to be bound by a measure of the Fisheries Commission;

(4) object or withdraw an objection to an amendment to the Convention; and

(5) act upon, or refer to any other appropriate authority, any other communication referred to in paragraph (1).

SEC. 205. INTERAGENCY COOPERATION.

(a) AUTHORITIES OF SECRETARY.—In carrying out the provisions of the Convention and this title, the Secretary may arrange for cooperation with other agencies of the United States, the States, the New England and the Mid-Atlantic Fishery Management Councils, and private institutions and organizations.

(b) OTHER AGENCIES.—The head of any Federal agency may—

(1) cooperate in the conduct of scientific and other programs, and furnish facilities and personnel, for the purposes of assisting the Organization in carrying out its duties under the Convention; and

(2) accept reimbursement from the Organization for providing such services, facilities, and personnel.

SEC. 206. RULEMAKING.

The Secretary shall promulgate regulations as may be necessary to carry out the purposes and objectives of the Convention and this title. Any such regulation may be made applicable, as necessary, to all persons and all vessels subject to the jurisdiction of the United States, wherever located.

SEC. 207. PROHIBITED ACTS AND PENALTIES.

(a) PROHIBITION.—It is unlawful for any person or vessel that is subject to the jurisdiction of the United States—

(1) to violate any regulation issued under this title or any measure that is legally binding on the United States under the Convention;

(2) to refuse to permit any authorized enforcement officer to board a fishing vessel that is subject to the person's control for purposes of conducting any search or inspection in connection with the enforcement of this title, any regulation issued under this title, or any measure that is legally binding on the United States under the Convention;

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

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

(5) 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 section; or

(6) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that the other person has committed an act prohibited by this section.

(b) CIVIL PENALTY.—Any person who commits any act that is unlawful under subsection (a) shall be liable to the United States for a civil penalty, or may be subject to a permit sanction, under section 308 of the Magnuson Act (16 U.S.C. 1858).

(c) CRIMINAL PENALTY.—Any person who commits an act that is unlawful under paragraph (2), (3), (4), or (6) of subsection (a) shall be guilty of an offense punishable under section 309(b) of the Magnuson Act (16 U.S.C. 1859(b)).

(d) CIVIL FORFEITURE.—

(1) IN GENERAL.—Any vessel (including its gear, furniture, appurtenances, stores, and cargo) used in the commission of an act that is unlawful under subsection (a), and any fish (or the fair market value thereof) taken or retained, in any manner, in connection with or as a result of the commission of any act that is unlawful under subsection (a), shall be subject to seizure and forfeiture as provided in section 310 of the Magnuson Act (16 U.S.C. 1860).

(2) DISPOSAL OF FISH.—Any fish seized pursuant to this title may be disposed of pursuant to the order of a court of competent jurisdiction or, if perishable, in a manner prescribed by regulations issued by the Secretary.

(e) ENFORCEMENT.—The Secretary and the Secretary of the department in which the Coast Guard is operating shall enforce the provisions of this title and shall have the authority specified in sections 311(a), (b)(1), and (c) of the Magnuson Act (16 U.S.C. 1861(a), (b)(1), and (c)) for that purpose.

(f) JURISDICTION OF COURTS.—The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under this section and may, at any time—

(1) enter restraining orders or prohibitions;

(2) issue warrants, process in rem, or other process;

(3) prescribe and accept satisfactory bonds or other security; and

(4) take such other actions as are in the interests of justice.

SEC. 208. CONSULTATIVE COMMITTEE.

(a) ESTABLISHMENT.—The Secretary of State and the Secretary, shall jointly establish a consultative committee to advise the Secretaries on issues related to the Convention.

(b) MEMBERSHIP.—

(1) The membership of the Committee shall include representatives from the New England and Mid-Atlantic Fishery Management Councils, the States represented on those Councils, the Atlantic States Marine Fisheries Commission, the fishing industry, the seafood processing industry, and others knowledgeable and experienced in the conservation and management of fisheries in the Northwest Atlantic Ocean.

(2) TERMS AND REAPPOINTMENT.—Each member of the consultative committee shall serve for a term of two years and shall be eligible for reappointment.

(c) DUTIES OF THE COMMITTEE.—Members of the consultative committee may attend—

(1) all public meetings of the General Council or the Fisheries Commission;

(2) any other meetings to which they are invited by the General Council or the Fisheries Commission; and

(3) all nonexecutive meetings of the United States Commissioners.

(d) RELATIONSHIP TO OTHER LAW.—The Federal Advisory Committee Act (5 U.S.C. App. §1 et seq.) shall not apply to the consultative committee established under this section.

SEC. 209. ADMINISTRATIVE MATTERS.

(a) PROHIBITION ON COMPENSATION.—A person shall not receive any compensation from the Government by reason of any service of the person as—

(1) a Commissioner, Alternate Commissioner, Representative, or Alternative Representative;

(2) an expert or adviser authorized under section 202(e); or

(3) a member of the consultative committee established by section 208.

(b) TRAVEL AND EXPENSES.—The Secretary of State shall, subject to the availability of appropriations, pay all necessary travel and other expenses of persons described in subsection (a)(1) and of not more than six experts and advisers authorized under section 202(e) with respect to their actual performance of their official duties pursuant to this title, in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code.

(c) STATUS AS FEDERAL EMPLOYEES.—A person shall not be considered to be a Federal employee by reason of any service of the person in a capacity described in subsection (a), except for purposes of injury compensation and tort claims liability under chapter 81 of title 5, United States Code, and chapter 17 of title 28, United States Code, respectively.

SEC. 210. DEFINITIONS.

In this title the following definitions apply:

(1) AUTHORIZED ENFORCEMENT OFFICER.—The term ''authorized enforcement officer'' means a person authorized to enforce this title, any regulation issued under this title, or any measure that is legally binding on the United States under the Convention.

(2) COMMISSIONER.—The term ''Commissioner'' means a United States Commissioner to the Northwest Atlantic Fisheries Organization appointed under section 202(a).

(3) CONVENTION.—The term ''Convention'' means the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, done at Ottawa on October 24, 1978.

(4) FISHERIES COMMISSION.—The term ''Fisheries Commission'' means the Fisheries Commission provided for by Articles II, XI, XII, XIII, and XIV of the Convention.

(5) GENERAL COUNCIL.—The term ''General Council'' means the General Council provided for by Article II, III, IV, and V of the Convention.

(6) MAGNUSON ACT.—The term ''Magnuson Act'' means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(7) ORGANIZATION.—The term ''Organization'' means the Northwest Atlantic Fisheries Organization provided for by Article II of the Convention.

(8) PERSON.—The term ''person'' means any individual (whether or not a citizen or national of the United States), and any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State).

(9) REPRESENTATIVE.—The term ''Representative'' means a United States Representative to the Northwest Atlantic Fisheries Scientific Council appointed under section 202(c).

(10) SCIENTIFIC COUNCIL.—The term ''Scientific Council'' means the Scientific Council provided for by Articles II, VI, VII, VIII, IX, and X of the Convention.

(11) SECRETARY.—The term ''Secretary'' means the Secretary of Commerce.

SEC. 211. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this title, including use for payment as the United States contribution to the Organization as provided in Article XVI of the Convention, $500,000 for each of the fiscal years 1995, 1996, 1997 and 1998.

TITLE III—ATLANTIC TUNAS CONVENTION ACT

SEC. 301. SHORT TITLE.

This title may be cited as the ''Atlantic Tunas Convention Authorization Act of 1995''.

SEC. 302. RESEARCH AND MONITORING ACTIVITIES.

(a) REPORT TO CONGRESS.—The Secretary of Commerce shall, within 90 days after the date of enactment of this Act, submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives—

(1) identifying current governmental and nongovernmental research and monitoring activities on Atlantic bluefin tuna and other highly migratory species;

(2) describing the personnel and budgetary resources allocated to such activities; and

(3) explaining how each activity contributes to the conservation and management of Atlantic bluefin tuna and other highly migratory species.

(b) RESEARCH AND MONITORING PROGRAM.—Section 3 of the Act of September 4, 1980 (16 U.S.C. 971i) is amended—

(1) by amending the section heading to read as follows:

"SEC. 3. RESEARCH ON ATLANTIC HIGHLY MIGRATORY SPECIES.";

(2) by striking the last sentence;

(3) by inserting ''(a) BIENNIAL REPORT ON BLUEFIN TUNA.—'' before ''The Secretary of Commerce shall''; and

(4) by adding at the end the following:

''(b) HIGHLY MIGRATORY SPECIES RESEARCH AND MONITORING.—

''(1) Within 6 months after the date of enactment of the Atlantic Tunas Convention Authorization Act of 1995, the Secretary of Commerce, in cooperation with the advisory committee established under section 4 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971b) and in consultation with the United States Commissioners on the International Commission for the Conservation of Atlantic Tunas (referred to elsewhere in this section as the 'Commission') and the Secretary of State, shall develop and implement a comprehensive research and monitoring program to support the conservation and management of Atlantic bluefin tuna and other highly migratory species that shall—

''(A) identify and define the range of stocks of highly migratory species in the Atlantic Ocean, including Atlantic bluefin tuna; and

''(B) provide for appropriate participation by nations which are members of the Commission.

''(2) The program shall provide for, but not be limited to—

''(A) statistically designed cooperative tagging studies;

''(B) genetic and biochemical stock analyses;

''(C) population censuses carried out through aerial surveys of fishing grounds and known migration areas;

''(D) adequate observer coverage and port sampling of commercial and recreational fishing activity;

''(E) collection of comparable real-time data on commercial and recreational catches and landings through the use of permits, logbooks, landing reports for charter operations and fishing tournaments, and programs to provide reliable reporting of the catch by private anglers;

''(F) studies of the life history parameters of Atlantic bluefin tuna and other highly migratory species;

''(G) integration of data from all sources and the preparation of data bases to support management decisions; and

''(H) other research as necessary.

''(3) In developing a program under this section, the Secretary shall provide for comparable monitoring of all United States fishermen to which the Atlantic Tunas Convention Act applies with respect to effort and species composition of catch and discards. The Secretary through the Secretary of State shall encourage other member nations to adopt a similar program.''.

SEC. 303. ADVISORY COMMITTEE PROCEDURES.

Section 4 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971b) is amended—

(1) by inserting ''(a)'' before ''There''; and

(2) by adding at the end the following:

''(b)(1) A majority of the members of the advisory committee shall constitute a quorum, but one or more such members designated by the advisory committee may hold meetings to provide for public participation and to discuss measures relating to the United States implementation of Commission recommendations.

''(2) The advisory committee shall elect a Chairman for a 2-year term from among its members.

''(3) The advisory committee shall meet at appropriate times and places at least twice a year, at the call of the Chairman or upon the request of the majority of its voting members, the United States Commissioners, the Secretary, or the Secretary of State. Meetings of the advisory committee shall be open to the public, and prior notice of meetings shall be made public in a timely fashion.

''(4)(A) The Secretary shall provide to the advisory committee in a timely manner such administrative and technical support services as are necessary for the effective functioning of the committee.

''(B) The Secretary and the Secretary of State shall furnish the advisory committee with relevant information concerning fisheries and international fishery agreements.

''(5) The advisory committee shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this Act, the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), and the Convention. The advisory committee shall publish and make available to the public a statement of its organization, practices, and procedures.

''(6) The advisory committee shall, to the maximum extent practicable, consist of an equitable balance among the various groups concerned with the fisheries covered by the Convention and shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App. §1 et seq.).''.

SEC. 304. REGULATIONS.

Section 6(c)(3) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971d(c)(3)) is amended by adding ''or fishery mortality level'' after ''quota of fish'' in the last sentence.

SEC. 305. FINES AND PERMIT SANCTIONS.

Section 7(e) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971(e)) is amended to read as follows:

''(e) The civil penalty and permit sanctions of section 308 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1858) are hereby made applicable to violations of this section as if they were violations of section 307 of that Act.''.

SEC. 306. AUTHORIZATION OF APPROPRIATIONS.

Section 10 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971h) is amended to read as follows:

''AUTHORIZATION OF APPROPRIATIONS

''SEC. 10. There are authorized to be appropriated to carry out this Act, including use for payment of the United States share of the joint expenses of the Commission as provided in article X of the Convention, the following sums:

''(1) For fiscal year 1995, $2,750,000, of which $50,000 are authorized in the aggregate for the advisory committee established under section 4 and the species working groups established under section 4A, and $1,500,000 are authorized for research activities under this Act.

''(2) For fiscal year 1996, $4,000,000, of which $62,000 are authorized in the aggregate for such advisory committee and such working groups, and $2,500,000 are authorized for such research activities.

''(3) For fiscal year 1997, $4,000,000 of which $75,000 are authorized in the aggregate for such advisory committee and such working groups, and $2,500,000 are authorized for such research activities.

''(4) For fiscal year 1998, $4,000,000 of which $75,000 are authorized in the aggregate for such advisory committee and such working groups, and $2,500,000 are authorized for such research activities.''.

SEC. 307. REPORT AND CERTIFICATION.

The Atlantic Tuna Convention Act of 1975 (16 U.S.C. 971 et seq.) is amended by adding at the end thereof the following:

''ANNUAL REPORT

''SEC. 11. Not later than April 1, 1996, and annually thereafter, the Secretary shall prepare and transmit to the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report, that—

''(1) details for the previous 10-year period the catches and exports to the United States of highly migratory species (including tunas, swordfish, marlin and sharks) from nations fishing on Atlantic stocks of such species that are subject to management by the Commission;

''(2) identifies those fishing nations whose harvests are inconsistent with conservation and management recommendations of the Commission;

''(3) describes reporting requirements established by the Secretary to ensure that imported fish products are in compliance with all international management measures, including minimum size requirements, established by the Commission and other international fishery organizations to which the United States is a party; and

''(4) describes actions taken by the Secretary under section 12.

''CERTIFICATION

''SEC. 12. (a) If the Secretary determines that vessels of any nation are harvesting fish which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the convention area in a manner or under circumstances which would tend to diminish the effectiveness of the conservation recommendations of the Commission, the Secretary shall certify such fact to the President.

''(b) Such certification shall be deemed to be a certification for the purposes of section 8 of the Fishermen's Protective Act (22 U.S.C. 1978).

''(c) Upon certification under subsection (a), the Secretary shall promulgate regulations under section 6(c)(4) with respect to a nation so certified.''.

SEC. 308. MANAGEMENT OF YELLOWFIN TUNA.

(a) Not later than 90 days after the date of the enactment of this act, the Secretary of Commerce in accordance with this section shall publish a preliminary determination of the level of the United States recreational and commercial catch of yellowfin tuna on an annual basis since 1980. The Secretary shall publish a preliminary determination in the Federal Register for comment for a period not to exceed 60 days. The Secretary shall publish a final determination not later than 140 days from the date of the enactment of this section.

(b) Not later than June 1, 1996, the Secretary of Commerce shall implement the recommendations of International Commission for the Conservation of Atlantic Tunas regarding yellowfin tuna.

TITLE IV—FISHERMEN'S PROTECTIVE ACT

SEC. 401. FINDINGS.

The Congress finds that—

(1) customary international law and the United Nations Convention on the Law of the Sea guarantee the right of passage, including innocent passage, to vessels through the waters commonly referred to as the ''Inside Passage'' off the Pacific Coast of Canada;

(2) Canada recently required all commercial fishing vessels of the United States to pay 1,500 Canadian dollars to obtain a ''license which authorizes transit'' through the Inside Passage;

(3) this action was inconsistent with international law, including the United Nations Convention on the Law of the Sea, and, in particular, Article 26 of that Convention, which specifically prohibits such fees, and threatened the safety of United States commercial fishermen who sought to avoid the fee by traveling in less protected waters;

(4) the Fishermen's Protective Act of 1967 provides for the reimbursement of vessel

owners who are forced to pay a license fee to secure the release of a vessel which has been seized, but does not permit reimbursement of a fee paid by the owner in advance in order to prevent a seizure;

(5) Canada required that the license fee be paid in person in 2 ports on the Pacific Coast of Canada, or in advance by mail;

(6) significant expense and delay was incurred by commercial fishing vessels of the United States that had to travel from the point of seizure back to one of those ports in order to pay the license fee required by Canada, and the costs of that travel and delay cannot be reimbursed under the Fishermen's Protective Act;

(7) the Fishermen's Protective Act of 1967 should be amended to permit vessel owners to be reimbursed for fees required by a foreign government to be paid in advance in order to navigate in the waters of that foreign country if the United States considers that fee to be inconsistent with international law;

(8) the Secretary of State should seek to recover from Canada any amounts paid by the United States to reimburse vessel owners who paid the transit license fee;

(9) the United States should review its current policy with respect to anchorage by commercial fishing vessels of Canada in waters of the United States off Alaska, including waters in and near the Dixon Entrance, and should accord such vessels the same treatment that commercial fishing vessels of the United States are accorded for anchorage in the waters of Canada off British Columbia;

(10) the President should ensure that, consistent with international law, the United States Coast Guard has available adequate resources in the Pacific Northwest and Alaska to provide for the safety of United States citizens, the enforcement of United States law, and to protect the rights of the United States and keep the peace among vessels operating in disputed waters;

(11) the President should continue to review all agreements between the United States and Canada to identify other actions that may be taken to convince Canada that any reinstatement of the transit license fee would be against Canada's long-term interests, and should immediately implement any actions which the President deems appropriate if Canada reinstates the fee;

(12) the President should continue to immediately convey to Canada in the strongest terms that the United States will not now, nor at any time in the future, tolerate any action by Canada which would impede or otherwise restrict the right of passage of vessels of the United States in a manner inconsistent with international law; and

(13) the United States should redouble its efforts to seek expeditious agreement with Canada on appropriate fishery conservation and management measures that can be implemented through the Pacific Salmon Treaty to address issues of mutual concern.

SEC. 402. AMENDMENT TO THE FISHERMEN'S PROTECTIVE ACT OF 1967.

(a) The Fishermen's Protective Act of 1967 (22 U.S.C. 1971 et seq.) is amended by adding at the end the following new section:

''SEC. 11. (a) In any case on or after June 15, 1994, in which a vessel of the United States exercising its right of passage is charged a fee by the government of a foreign country to engage in transit passage between points in the United States (including a point in the exclusive economic zone or in an area over which jurisdiction is in dispute), and such fee is regarded by the United States as being inconsistent with international law, the Secretary of State shall reimburse the vessel owner for the amount of any such fee paid under protest.

''(b) In seeking such reimbursement, the vessel owner shall provide, together with such other information as the Secretary of State may require—

''(1) a copy of the receipt for payment;

''(2) an affidavit attesting that the owner or the owner's agent paid the fee under protest; and

''(3) a copy of the vessel's certificate of documentation.

''(c) Requests for reimbursement shall be made to the Secretary of State within 120 days after the date of payment of the fee, or within 90 days after the date of enactment of this section, whichever is later.

''(d) such funds as may be necessary to meet the requirements of this section may be made available from the unobligated balances of previously appropriated funds remaining in the Fishermen's Guaranty Fund established under section 7 and the Fishermen's Protective Fund established under section 9. To the extent that requests for reimbursement under this section exceed such funds, there are authorized to be appropriated such sums as may be needed for reimbursements authorized under subsection (a).

''(e) The Secretary of State shall take such action as the Secretary deems appropriate to make and collect claims against the foreign country imposing such fee for any amounts reimbursed under this section.

''(f) For purposes of this section, the term 'owner' includes any charterer of a vessel of the United States.

''(g) This section shall remain in effect until October 1, 1996.''.

(b) The Fishermen's Protective Act of 1967 (22 U.S.C. 1971 et seq.) is further amended by adding at the end the following:

''SEC. 12. (a) If the Secretary of State finds that the government of any nation imposes conditions on the operation or transit of United States fishing vessels which the United States regards as being inconsistent with international law or an international agreement, the Secretary of State shall certify that fact to the President.

''(b) Upon receipt of a certification under subsection (a), the President shall direct the heads of Federal agencies to impose similar conditions on the operation or transit of fishing vessels registered under the laws of the nation which has imposed conditions on United States fishing vessels.

''(c) For the purposes of this section, the term 'fishing vessel' has the meaning given that term in section 2101(11a) of title 46, United States Code.

''(d) It is the sense of the Congress that any action taken by any Federal agency under subsection (b) should be commensurate with any conditions certified by the Secretary of State under subsection (a).''.

SEC. 403. REAUTHORIZATION.

(a) Section 7(c) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1977(c)) is amended by striking the third sentence.

(b) Section 7(e) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1977(e)) is amended by striking ''October 1, 1993'' and inserting ''October 1, 2000''.

SEC. 404. TECHNICAL CORRECTIONS.

(a)(1) Section 15(a) of Public Law 103-238 is amended by striking ''April 1, 1994,'' and inserting ''May 1, 1994,''.

(2) The amendment made by paragraph (1) shall be effective on and after April 30, 1994.

(b) Section 803(13)(C) of Public Law 102-567 (16 U.S.C. 5002(13)(C)) is amended to read as follows:

''(C) any vessel supporting a vessel described in subparagraph (A) or (B).''.

TITLE V—FISHERIES ENFORCEMENT IN CENTRAL SEA OF OKHOTSK

SEC. 501. SHORT TITLE.

This title may be cited as the ''Sea of Okhotsk Fisheries Enforcement Act of 1995''.

SEC. 502. FISHING PROHIBITION.

(a) ADDITION OF CENTRAL SEA OF OKHOTSK.—Section 302 of the Central Bering Sea Fisheries Enforcement Act of 1992 (16 U.S.C. 1823 note) is amended by inserting ''and the Central Sea of Okhotsk'' after ''Central Bering Sea''.

(b) DEFINITION.—Section 306 of such Act is amended—

(1) by redesignating paragraphs (2), (3), (4), (5), and (6) as paragraphs (3), (4), (5), (6), and (7), respectively; and

(2) by inserting after paragraph (1) the following:

''(2) CENTRAL SEA OF OKHOTSK.—The term 'Central Sea of Okhotsk' means the central Sea of Okhotsk area which is more than two hundred nautical miles seaward of the baseline from which the breadth of the territorial sea of the Russian Federation is measured.''.

TITLE VI—DRIFTNET MORATORIUM

SEC 601. SHORT TITLE.

This title may be cited as the ''High Seas Driftnet Fishing Moratorium Protection Act''.

SEC. 602. FINDINGS.

The Congress finds that—

(1) Congress has enacted and the President has signed into law numerous Acts to control or prohibit large-scale driftnet fishing both within the jurisdiction of the United States and beyond the exclusive economic zone of any nation, including the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 (Title IV, P.L. 100-220), the Driftnet Act Amendments of 1990 (P.L. 101-627), and the High Seas Driftnet Fisheries Enforcement Act (Title I, P.L. 102-582);

(2) the United States is a party to the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, also known as the Wellington Convention;

(3) the General Assembly of the United Nations has adopted three resolutions and three decisions which established and reaffirm a global moratorium on large-scale driftnet fishing on the high seas, beginning with Resolution 44/225 in 1989 and most recently in Decision 48/445 in 1993;

(4) the General Assembly of the United Nations adopted these resolutions and decisions at the request of the United States and other concerned nations;

(5) the best scientific information demonstrates the wastefulness and potentially destructive impacts of large-scale driftnet fishing on living marine resources and seabirds; and

(6) Resolution 46/215 of the United Nations General Assembly calls on all nations, both individually and collectively, to prevent large-scale driftnet fishing on the high seas.

SEC. 603. PROHIBITION.

The United States, or any agency or official acting on behalf of the United States, may not enter into any international agreement with respect to the conservation and management of living marine resources or the use of the high seas by fishing vessels that would prevent full implementation of the global moratorium on large-scale driftnet fishing on the high seas, as such moratorium is expressed in Resolution 46/215 of the United Nations General Assembly.

SEC. 604. NEGOTIATIONS.

The Secretary of State, on behalf of the United States, shall seek to enhance the implementation and effectiveness of the United Nations General Assembly resolutions and decisions regarding the moratorium on large-scale driftnet fishing on the high seas

through appropriate international agreements and organizations.

SEC. 605. CERTIFICATION.

The Secretary of State shall determine in writing prior to the signing or provisional application by the United States of any international agreement with respect to the conservation and management of living marine resources or the use of the high seas by fishing vessels that the prohibition contained in section 603 will not be violated if such agreement is signed or provisionally applied.

SEC. 606. ENFORCEMENT.

The President shall utilize appropriate assets of the Department of Defense, the United States Coast Guard, and other Federal agencies to detect, monitor, and prevent violations of the United Nations moratorium on large-scale driftnet fishing on the high seas for all fisheries under the jurisdiction of the United States and, in the case of fisheries not under the jurisdiction of the United States, to the fullest extent permitted under international law.

TITLE VII—GOVERNING INTERNATIONAL FISHERY AGREEMENT

SEC. 701. AGREEMENT WITH ESTONIA.

Notwithstanding section 203 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1823), the governing international fishery agreement between the Government of the United States of America and the government of the Republic of Estonia as contained in the message to Congress from the President of the United States dated January 19, 1995, is approved as a governing international fishery agreement for the purposes of such Act and shall enter into force and effect with respect to the United States on the date of enactment of this Act.●

● Mr. KERRY. Mr. President, today I am pleased to join my friend, the senior Senator from Alaska, in introducing the Fisheries Act of 1995. This legislation addresses an issue of great importance to the people of Massachusetts, the Nation and, indeed, the world—the promotion of sustainable fisheries on a worldwide basis.

One of the world's primary sources of dietary protein, marine fish stocks were once thought to be an inexhaustible resource. However, after peaking in 1989 at a record 100 million metric tons, world fish landings now have begun to decline. The current state of the world's fisheries has both environmental and political implications. Last year, the U.N. Food and Agriculture Organization [FAO] estimated that 13 of 17 major ocean fisheries may be in trouble. Competition among nations for dwindling resources has become all too familiar in many locations around the world.

The bill before us today will strengthen international fisheries management. Among the provisions reinforcing U.S. commitments to conserve and manage global fisheries, are the following: First, implementation of the FAO Agreement To Promote Compliance With International Convention and Management Measures by Fishing Vessels on the High Seas; second, implementation of the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries; third, improved research and international cooperation with respect to Atlantic bluefin tuna and other valuable highly migratory species; fourth, reimbursement of United States fishermen for illegal transit fees charged by the Canadian Government; fifth, a ban on U.S. fishing activities in the central Sea of Okotsk; sixth, a prohibition on U.S. participation in international agreements which undermine the U.N. moratorium on large-scale driftnet fishing, and seventh, approval of the governing international fishing agreement between the United States and the Republic of Estonia.

The measures of this bill will make a substantial contribution to U.S. leadership in the conservation and management of international fisheries. I encourage my colleagues to join with me to support its passage.●

By Mr. BUMPERS:

S. 268. A bill to authorize the collection of fees for expenses for triploid grass carp certification inspections, and for other purposes; to the Committee on Environment and Public Works.

THE TRIPLOID GRASS CARP CERTIFICATION ACT OF 1995

● Mr. BUMPERS. Mr. President, these days we hear a lot about the need to reinvent Government and make it more responsive and less costly. Today, I am introducing legislation along with Senator PRYOR that will help the Fish and Wildlife Service achieve both these goals.

For many years, the Fish and Wildlife Service has conducted a triploid grass carp certification program. The triploid grass carp is a sterile fish that is used by 29 States to help control aquatic vegetation in lakes, ponds, and reservoirs. This fish has proven to be both effective and economical and many States prefer using it over chemicals and pesticides.

As more and more States have legalized the use of the triploid grass carp, they have adopted regulations requiring that the Fish and Wildlife Service verify through certification that these fish are sterile. If a reproducing triploid grass carp was to accidentally enter a pond or river ecosystem it could seriously damage the habitat of existing fish species. Certification by the Fish and Wildlife Service ensures that the fish are ecologically sound and clears the way for them to be shipped to various States by private producers.

Last year, the Fish and Wildlife Service conducted 550 triploid grass carp certifications, free of charge. The cost for providing this service was $70,000. Unfortunately, because of severe fiscal constraints, the agency can no longer afford to absorb the costs associated with the certification process and is moving to discontinue the program in the next 60 days. The producers of the triploid grass carp have informed the Fish and Wildlife Service they are willing to pay the agency for this service, provided that the money comes back to the agency and is used only for the triploid grass carp certification program. The agency supports this ''fee for service'' concept but needs congressional authorization before it can be instituted.

Mr. President, the bill I am introducing today, will give the Fish and Wildlife Service the authority it needs to charge a user fee and apply it to the triploid grass carp certification program. Without this legislation, a valuable program that benefits the public will be terminated.

I urge my colleagues to join me in support of this legislation and look forward to its speedy passage.

Mr. President, I ask unanimous consent that the full text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 268

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

SECTION 1. COLLECTION OF FEES FOR TRIPLOID GRASS CARP CERTIFICATION INSPECTIONS.

(a) IN GENERAL.—The Secretary of the Interior, acting through the Director of the Fish and Wildlife Service (referred to in this section as the ''Director''), may charge reasonable fees for expenses to the Federal Government for triploid grass carp certification inspections requested by a person who owns or operates an aquaculture facility.

(b) AVAILABILITY.—All fees collected under subsection (a) shall be available to the Director until expended, without further appropriations.

(c) USE.—The Director shall use all fees collected under subsection (a) to carry out the activities referred to in subsection (a).

By Mr. DOLE (for Mr. SIMPSON):

S. 269. A bill to amend the Immigration and Nationality Act to increase control over immigration to the United States by increasing border patrol and investigator personnel; improving the verification system for employer sanctions; increasing penalties for alien smuggling and for document fraud; reforming asylum, exclusion, and deportation law and procedures; instituting a land border user fee; and to reduce use of welfare by aliens; to the Committee on the Judiciary.

THE IMMIGRANT CONTROL AND FINANCIAL RESPONSIBILITY ACT

● Mr. SIMPSON. Mr. President, I introduce legislation which will provide the Immigration Service with some badly needed tools to further the goal of achieving control over immigration. The bill will also reduce the abuse of the public welfare system by immigrants.

For years, as chairman or ranking member of the Immigration Subcommittee, I have advocated strong measures to control illegal immigration so that we can maintain a legal immigration program that will have the support of the American people. This legislation will continue that effort by authorizing additional Border Patrol officers and an increase in the personnel who investigate alien smuggling and the hiring of unlawful aliens. Most important, the bill will provide

for the establishment of a new verification system to enable the Immigration Service, and employers, to verify the work authority of new hires. The system will also verify the eligibility of applicants for public assistance.

Alien smuggling has become a serious and growing problem. This measure will provide new authority to the Justice Department to assist them in combating what the U.N. High Commissioner for Refugees has referred to as a ''modern day slave trade.''

The manufacture and use of fraudulent documents has reached such proportions that one can obtain high quality Social Security cards, driver's licenses, voter registration cards, or whatever, simply by placing a morning order on a Los Angeles street corner and picking up the documents later that day for less than $100. My legislation will increase the penalty for such document fraud. It will also provide new penalties for false statements in documents required by the Immigration Service.

To combat the abuse of our immigration laws by persons who arrive at our ports-of-entry with no documents, or with fraudulent documents, the bill will provide for the expedited exclusion of such aliens. To more effectively remove persons found to be unlawfully in the United States, the bill will streamline our deportation proceedings.

In recent months we have seen the Attorney General's parole authority being used to admit groups of persons for permanent residence in the United States. This is an abuse of the spirit, if not the letter, of the law allowing the Attorney General to parole aliens into the United States in certain circumstances. This bill will limit the use of parole authority to individual cases for humanitarian reasons or significant public benefit, and will require that the number of parolees who remain more than a year must be offset by a reduction in regular immigration.

In recent years many unlawful aliens have discovered the key to extending their stay in the United States. By claiming fear of political persecution at home, they are able to delay their departure for years as they remain here and work while awaiting their hearing. There are over 400,000 persons in the backlog of such asylum claimants. This legislation will make clear that asylum claimants are not necessarily entitled to work authority, and it will provide increased resources for addressing the asylum application backlogs.

The Refugee Act, passed nearly 15 years ago, set the ''normal flow'' of refugees to be resettled in the United States at 50,000 per year. But the number of refugees resettled here in those 15 years has exceeded that number by hundreds of thousands. Every single year since the Refugee Act passed in 1980 refugee admissions have far exceeded the ''normal flow.'' This legislation will require congressional approval for the admission of more than 50,000 refugees in a fiscal year—except in a refugee emergency.

Thirty years ago, in order to provide a legal status for the hundreds of thousands of Cubans who had fled Cuba after Castro's Communist intentions became clear, Congress passed the Cuban Adjustment Act. This allowed those Cubans who had fled the island in the 1960's to adjust to permanent resident status after 1 year in the United States. The persons for whom this extraordinary legislation was enacted have long since regularized their status in the United States. Yet, the Cuban Adjustment Act remains on the books as an anachronism that is both unfair and unnecessary. While nearly 4 million persons await their immigration visas in our vast immigration backlogs, some for as long as 20 years, any Cuban who gets to the United States, legally or illegally, can get a green card after 1 year. This special treatment is no longer justifiable and is not right. This bill will repeal the Cuban Adjustment Act.

It has been the tradition of the United States for more than 100 years that newcomers to this country should be self-sufficient. Our laws have long provided that those persons who are ''likely at any time to become a public charge'' are inadmissible, and that those immigrants who later do become ''public charges'' are deportable. These provisions have proven to be unenforced, or unenforceable. This legislation will make clear that an American resident or citizen who sponsors his or her relatives will be financially responsible for them until they become citizens. The bill also makes clear that those immigrants who do become ''public charges'' become deportable. My bill will not deny legal immigrants access to our public welfare system—the safety net will be there—but those immigrants who become dependent upon public assistance will run the risk of deportation. Under this legislation any immigrant who receives public assistance for more than 12 months will be deportable. Illegal immigrants will be denied all public assistance except certain emergency and child health and nutrition benefits.

Finally, this bill will impose a border crossing users fee to help offset the cost of maintaining our border controls. This fee will raise moneys that can be used to improve our border crossing facilities and deter the entry of unlawful aliens.

There will be other comprehensive legislation introduced in the Senate. And I understand the Clinton administration is working on their own legislative package on immigration reform. I intend the legislation I introduced today to be the basis for hearings at which we will consider all other responsible proposals.

The Commission on Immigration Reform has provided as with serious and thoughtful recommendations. Those that were not already in legislation I introduced in the last Congress, I have included in this legislation, such as a new system to verify eligibility to work in the United States. This bill also follows the Commission's recommendation for an enforceable contract of support, signed by the person in this country who sponsors any immigrant relative for immigration to the United States. This will require such a sponsor to reimburse governments which provide the immigrant with welfare or other assistance.

The bill I introduce today focuses on illegal immigration control issues. Our legal immigration program is also in need of thoughtful reform and revision. I am presently drafting the legislation to accomplish these needed reforms. I understand the Commission on Immigration Reform will present us with their recommendations on legal immigration reform in the early spring. I look forward to those.

To be sustainable, immigration must always serve the national interest. We must be able to assure the American people that whatever other goals our immigration policy may further, its overriding goal is to serve the long-term interest of the majority of our citizens.

We have much to do on immigration reform. The election last November demonstrated clearly that the American people wish us to ''get on with the job.'' This bill I introduce today is the first step and other serious steps will soon follow.●

By Mr. SMITH (for himself, Mr. SIMPSON, Mr. D'AMATO, Mr. COCHRAN, Mr. REID, and Mr. GREGG):

S. 270. A bill to provide special procedures for the removal of alien terrorists; to the Committee on the Judiciary.

THE ALIEN TERRORIST REMOVAL ACT OF 1995

Mr. SMITH. Mr. President, we have a major opportunity early in this Congress to enact vitally important legislation to protect our Nation against the scourge of international terrorism. On behalf of myself, the distinguished chairman of the Immigration Subcommittee, Senator SIMPSON, and Senators D'AMATO, COCHRAN, GREGG, and REID, I introduce the Alien Terrorist Removal Act of 1995.

Mr. President, one of this Senator's greatest disappointments about last year's crime bill was that certain members of the conference committee from the House side insisted on stripping from it the Smith-Simpson alien terrorist removal amendment. Apparently at the instigation of a number of aliens' rights organizations, they killed a sorely needed antiterrorism measure that had been proposed by the Reagan Justice Department and actively promoted by the Bush Justice Department. In her letter to the conferees regarding the crime bill, in fact, Clinton administration Attorney General Janet Reno said that our amendment is both constitutional and addresses a problem that needs to be solved.

FBI Director Louis Freeh has now made clear that he shares our disappointment. A December 2, 1994, article in the Los Angeles Times quotes Director Freeh as saying that the Justice Department should make resurrecting the Smith-Simpson amendment one of its highest antiterrorism legislative priorities in the 104th Congress.

Let us explain briefly what our proposal is all about. The Alien Terrorist Removal Act of 1995 would establish a special procedure under which classified information could be used to establish the deportability of alien terrorists. It is designed to safeguard national security interests, while at the same time according appropriate protection to the constitutional due process rights of aliens.

THE PROBLEM ADDRESSED BY THE BILL

Under current law, classified information can be used to establish the excludability of aliens, but not their deportability. Thus, when there is insufficient unclassified information available to establish the deportability of a terrorist alien, the Government faces two equally unacceptable choices.

First, the Justice Department could declassify enough of its evidence against the alien to establish his deportability. Too often, however, that simply cannot be done because the information in question is so sensitive that its disclosure would endanger the lives of human sources or compromise highly sensitive methods of intelligence gathering.

The Government's second, and equally untenable, choice would be simply to let the terrorist alien involved remain here. Unfortunately, that is not just a hypothetical situation. It happens in real cases. Recently, in fact, we understand, it happened in the case of an alien terrorist who is a high-ranking member of a notorious Middle Eastern terrorist organization. Due to the unavailability of the procedure that would be established by our bill, that terrorist had to be allowed to remain at large in the United States.

HOW THE BILL WOULD SOLVE THE PROBLEM

Utilizing the existing definitions of terrorism in the Immigration Act of 1990 and of classified information in the Classified Information Procedures Act, our bill would establish a special alien terrorist removal court made up of sitting U.S. district judges that is modeled on the special court created by the Foreign Intelligence Surveillance Act. The special court procedure established by our bill could only be invoked when the Justice Department certifies under seal that: First, the Attorney General or the Deputy Attorney General has personally approved invoking the special procedure; second, an alien terrorist is physically present in the United States; and third, the removal of the alien in normal public immigration proceedings would pose a risk to the national security because it would disclose classified information.

Under our bill, once the Justice Department made those certifications, a U.S. district judge would determine whether the invocation of the special procedure is justified. In order for the procedure to be invoked, the district judge would have to determine that: First, the alien involved has been correctly identified; second, a public deportation hearing would pose a risk to the lives of human sources or the national security because it would disclose classified information; and third the threat posed by the alien's physical presence is immediate and involves the risk of death or serious bodily harm to American citizens.

Our bill provides that if the U.S. district judge makes those determinations, a special removal hearing would be held. The alien would be provided the right to be present at the hearing and to be represented by counsel, at public expense if necessary. The alien also would be given the right to introduce evidence on his or her own behalf and to ask the judge to issue subpoenas for witnesses. For its part, the Justice Department would provide the U.S. district judge with the classified information, in camera and ex parte, to establish the need for the alien terrorist's removal.

Under our legislation, the U.S. district judge then would review the classified information in chambers. Where possible, without compromising the classified evidence, the Federal judge would give the alien an unclassified summary of the evidence and/or the facts established by that evidence. Ultimately, the Federal judge would determine whether, considering the record as a whole, the Justice Department has proven, by clear and convincing evidence, that the alien is a terrorist and should be removed. Finally, under our bill, the alien involved would be given the right to appeal to the U.S. Court of Appeals for the Federal Circuit and to petition for a writ of certiorari from the Supreme Court.

WHY THE BILL IS CONSTITUTIONAL

When the Bush Justice Department was in the process of deciding whether to adopt the Reagan administration proposal that our bill embodies, the Justice Department's Office of Legal Counsel reviewed its constitutionality. As a result of that review, the OLC determined that the proposal is constitutional and the Bush administration subsequently endorsed it. When the Senate considered the Smith-Simpson amendment late in 1993, our colleague, then-Senate Judiciary Committee Chairman JOSEPH BIDEN, agreed. Calling the case for the constitutionality of this proposal irrefutable, Senator BIDEN commented that nothing in the proposal rises to the level of being unconstitutional. Finally, as we have noted, when the Senate adopted our amendment and sought the Clinton Justice Department's comments, the Department wrote to members of the conference committee that it continues to regard our proposal as constitutional.

The constitutionality of our bill would be determined under the test set forth by the Supreme Court in *Mathews* v. *Eldridge*, 424 U.S. at 335. The Court set forth these three factors to inform a court's decision, in a given case, whether due process has been satisfied:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Given the compelling nature of the national security interests at stake in the rare cases in which the need for this special procedure would arise and the protections that are afforded to the alien by our bill, we have no doubt that our proposal is fully constitutional.

Mr. President, I urge the Judiciary Committee to hold prompt hearings on this important measure. I would hope that it can be passed and sent to the President in the early months of this historic 104th Congress.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 270

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Alien Terrorist Removal Act of 1995.''.

SEC. 2. REMOVAL OF ALIEN TERRORISTS.

The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting the following new section:

''REMOVAL OF ALIEN TERRORISTS

''SEC. 242C. (a) DEFINITIONS.—As used in this section—

''(1) the term 'alien terrorist' means any alien described in section 241(a)(4)(B);

''(2) the term 'classified information' has the same meaning as defined in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App. IV);

''(3) the term 'national security' has the same meaning as defined in section 1(b) of the Classified Information Procedures Act (18 U.S.C. App. IV);

''(4) the term 'special court' means the court described in subsection (c) of this section; and

''(5) the term 'special removal hearing' means the hearing described in subsection (e) of this section.

''(b) APPLICATION FOR USE OF PROCEDURES.—The provisions of this section shall apply whenever the Attorney General certifies under seal to the special court that—

''(1) the Attorney General or Deputy Attorney General has approved of the proceeding under this section;

''(2) an alien terrorist is physically present in the United States; and

''(3) removal of such alien terrorist by deportation proceedings described in sections 242, 242A, or 242B would pose a risk to the national security of the United States because such proceedings would disclose classified information.

''(c) SPECIAL COURT.—

''(1) The Chief Justice of the United States shall publicly designate up to seven judges from up to seven United States judicial districts to hear and decide cases arising under this section, in a manner consistent with the designation of judges described in section 103(a) of the Foreign Intelligence Surveillance Act (50 U.S.C. 1803(a)).

''(2) The Chief Justice may, in the Chief Justice's discretion, designate the same judges under this section as are designated pursuant to 50 U.S.C. 1803(a).

''(d) INVOCATION OF SPECIAL COURT PROCEDURE.—

''(1) When the Attorney General makes the application described in subsection (b), a single judge of the special court shall consider the application in camera and ex parte.

''(2) The judge shall invoke the procedures of subsection (e), if the judge determines that there is probable cause to believe that—

''(A) the alien who is the subject of the application has been correctly identified;

''(B) a deportation proceeding described in sections 242, 242A, or 242B would pose a risk to the national security of the United States because such proceedings would disclose classified information; and

''(C) the threat posed by the alien's physical presence is immediate and involves the risk of death or serious bodily harm.

''(e) SPECIAL REMOVAL HEARING.—

''(1) Except as provided in paragraph (4), the special removal hearing authorized by a showing of probable cause described in subsection (d)(2) shall be open to the public.

''(2) The alien shall have a right to be present at such hearing and to be represented by counsel. Any alien financially unable to obtain counsel shall be entitled to have counsel assigned to represent such alien. Counsel may be appointed as described in section 3006A of title 18, United States Code.

''(3) The alien shall have a right to introduce evidence on his own behalf, and except as provided in paragraph (4), shall have a right to cross-examine any witness or request that the judge issue a subpoena for the presence of a named witness.

''(4) The judge shall authorize the introduction in camera and ex parte of any item of evidence for which the judge determines that public disclosure would pose a risk to the national security of the United States because it would disclose classified information.

''(5) With respect to any evidence described in paragraph (4), the judge shall cause to be delivered to the alien either—

''(A)(i) the substitution for such evidence of a statement admitting relevant facts that the specific evidence would tend to prove, or (ii) the substitution for such evidence of a summary of the specific evidence; or

''(B) if disclosure of even the substituted evidence described in subparagraph (A) would create a substantial risk of death or serious bodily harm to any person, a statement informing the alien that no such summary is possible.

''(6) If the judge determines—

''(A) that the substituted evidence described in paragraph (5)(A) will provide the alien with substantially the same ability to make his defense as would disclosure of the specific evidence, or

''(B) that disclosure of even the substituted evidence described in paragraph (5)(A) would create a substantial risk of death or serious bodily harm to any person, then the determination of deportation (described in subsection (f)) may be made pursuant to this section.

''(f) DETERMINATION OF DEPORTATION.—

(1) If the determination in subsection (e)(6)(A) has been made, the judge shall, considering the evidence on the record as a whole, require that the alien be deported if the Attorney General proves, by clear and convincing evidence, that the alien is subject to deportation because he is an alien as described in section 241(a)(4)(B).

''(2) If the determination in subsection (e)(6)(B) has been made, the judge shall, considering the evidence received (in camera and otherwise), require that the alien be deported if the Attorney General proves, by clear, convincing, and unequivocal evidence, that the alien is subject to deportation because he is an alien as described in section 241(a)(4)(B).

''(g) APPEALS.—

''(1) The alien may appeal a determination under subsection (f) to the court of appeals for the Federal Circuit, by filing a notice of appeal with such court within 20 days of the determination under such subsection.

''(2) The Attorney General may appeal a determination under subsection (d), (e), or (f) to the court of appeals for the Federal Circuit, by filing a notice of appeal with such court within 20 days of the determination under any one of such subsections.

''(3) When requested by the Attorney General, the entire record of the proceeding under this section shall be transmitted to the court of appeals under seal. The court of appeals shall consider such appeal in camera and ex parte.''.

By Mr. MCCONNELL:

S.J. Res. 23. A joint resolution proposing an amendment to the Constitution of the United States to repeal the 22d amendment relating to Presidential term limitations; to the Committee on the Judiciary.

JOINT RESOLUTION TO REPEAL THE 22D AMENDMENT

● Mr. MCCONNELL. Mr. President, it is not without a sense of irony that I am introducing legislation today contrary to the spirit of one of the more notable provisions in the renowned Republican Contract With America. This resolution I put forth would repeal the Presidential term limit—the 22d amendment to the Constitution which Republicans hastily, and regrettably, passed nearly 50 years ago.

This is, in my view, the only term limits bill which should pass Congress.

As we all know, the Contract with America, signed by Republican candidates for the House of Representatives last year, included a call for congressional term limits. Term limits are wildly popular in some areas of the country. But term limits also are misguided, undemocratic and a particularly bad idea for some sparsely populated States where the clamor for them is greatest.

Fortunately, the contract promised a House vote on term limits, not passage. That vote is a promise the House should keep. And for the Nation's sake, it is my hope that the vote result will be a resounding ''no.''

The popular sentiment for term limits is the ultimate and, perhaps, inevitable manifestation of public disdain for government. It is what Congress gets for being irresponsible on the fundamentals—principally money matters. People justifiably do not feel they are getting a return on their investment in government. As their elected tax money managers, so to speak, we are in the crosshairs. And they are coming after us with term limits—a very blunt instrument of electoral revenge.

Term limits are the legislative translation of voters leaning out their windows screaming: We're mad as hell and not going to take it anymore.

Fifty years ago, there was such a sentiment, confined primarily to the Republican caucus, contained in the 1940 and 1944 Republican Party platforms, and directed at the architect of the New Deal—President Franklin Delano Roosevelt. In 1947, a Republican congressional majority, fresh from a virtual political exile, passed the 22d amendment to the Constitution to limit Presidents to two terms in office. They were determined that history not repeat itself—there would be no more four-term Roosevelts. They would see to it.

Mr. President, not a single Republican in the House or Senate voted against that term limit amendment in 1947. It was a brash, ill-conceived, hastily executed and strictly partisan response to the unprecedented tenure of President Roosevelt. As constitutional scholars have observed, this was the first constitutional modification that constricted voter suffrage. And Republicans should take heed, for it is we who have been hoisted by their petard. It is poetic justice, in a sense, that Presidents Eisenhower and Reagan are the only ones, thus far, who have been constrained by the 22d amendment.

The Presidential term limit does not, as some have contended, argue for congressional term limits. The 22d amendment was a mistake, Mr. President, and that is why I am introducing today a Senate Joint Resolution to repeal it. It would be fitting, and in the national interest, for the Republican majority of 1995 to rectify a mistake made by the Republican majority of 1947. Democrats hesitant to change that which has been the status quo for half a century may want to review President Harry S. Truman's words in favor of repeal:

> What have you done? You have taken a man and put him in the hardest job in the world, and sent him out to fight our battles in a life and death struggle. And you have sent him out to fight with one hand tied behind his back, because everyone knows he cannot run for reelection.
>
> He is still the President of the whole country, and all of us are dependent upon him to do his job. If he is not a good president, and you do not want to keep him, you do not have to reelect him.

Mr. President, it is that simple. The vote gives voters the power to limit terms. Term limits, Presidential and congressional, are unnecessary and unwise.●

ADDITIONAL COSPONSORS

S. 12

At the request of Mr. ROTH, the names of the Senator from Iowa [Mr. GRASSLEY], the Senator from Oregon