



Intent and the Law

THE BILLFISH CONSERVATION ACT

The Billfish Conservation Act, which prohibits sale of marlin, sailfish and spearfish, will provide enduring conservation benefits for these vulnerable species, if properly implemented and enforced. NOAA Fisheries is currently writing rules to enforce the law, with particular attention to the BCA's exemption for "traditional fisheries" and what restrictions to put on the transportation and sale of fish landed in Hawaii and neighboring U.S. islands.

Until final implementing rules are issued, NOAA Fisheries is interpreting the BCA as a complete prohibition on possession and sale of billfish in the continental United States, and will continue to do so until it issues a Final Rule sometime in 2014. To underscore this policy, NOAA issued an enforcement order that existing billfish product on the mainland be destroyed or donated to charity.

The agency's current interpretation is the right one, based on the written record of Congressional action on HR 2706, the Billfish Conservation Act of 2012 [Public Law 112-183], which makes the intent of Congress unmistakable:

- The report that accompanied the bill to a vote in the House of Representatives on September 10, 2012 states: "H.R. 2706 would prohibit the sale of billfish or billfish products or possession of billfish or products containing billfish for the purposes of sale. The prohibition would not apply to the State of Hawaii and Pacific Insular Areas as long as the billfish were only sold in Hawaii or a Pacific Insular Area." [Report 112-656]
- Rep. Doc Hastings, chair of the Natural Resources Committee, the committee that wrote the exemption language, declared on the House floor when asking for unanimous consent to pass the legislation: "Now, I note, Mr. Speaker, that concern had been raised at the June hearing that U.S. fishermen in Hawaii and the Pacific insular areas might be disadvantaged by these new rules and that the local consumption of billfish products might be made illegal. The bill was amended during committee consideration to address this concern; and the legislation, as amended, now protects these U.S. fishermen and the existing limited, traditional local consumption of billfish products while still providing additional and increased protection for billfish populations in the United States." [Congressional Record, September 10, 2012: H5732-7733]
- Following Rep. Hastings, Rep. Jeff Miller, the original sponsor of the Billfish Conservation Act, removed any doubt as to the bill's intent when he said: "By eliminating the sale in the continental U.S., passage of this bill will support the billfish population growth, a healthy ocean ecosystem, and improve recreational fishing opportunities." [CR, Sept. 10, 2012: H5732-7733]

- In its estimate of costs associated with the Billfish Conservation Act, “as ordered reported by the House Natural Resources Committee on August 1, 2012” (that is, the bill in its final form), the Congressional Budget Office (CBO) based its review and conclusions on the assumption that “Hawaii and the Pacific Insular Area would be exempt from complying with the bill as long as billfish and billfish products from those areas are sold there.” [CBO September 7, 2012]
- HR 2706, as approved by the House, was subsequently adopted without amendment by the Senate on September 22, 2012, with the above interpretations of the “Hawaii exemption” uncontested.¹

Clearly, the intent of Congress in passing the Billfish Conservation Act was to exempt “traditional fisheries and markets” to allow for a way of life and a cultural tradition – the local sale and consumption of billfish (marlin and other species) – to continue, “while still providing additional and increased protection for billfish populations in the United States,” as Chairman Hastings noted. Without question, interpreting the Act in any other way would undercut its intent:

- The Act aims to end importation of foreign-caught fish – as many as 30,000 a year – into mainland markets. If billfish caught in Hawaii were allowed to replace imports on the mainland, the Act’s conservation benefits would be diminished.
- International law accepts that a country may protect its own conservation interests from harm caused by imports, but only as long as it does not discriminate between domestic and imported products. Sale of Hawaii-caught billfish on the mainland would violate these trade protocols.

Finally, by imposing a strict prohibition on sales of any billfish on the continental U.S., enforcing the BCA will be simple, straightforward and cost-effective. Difficulties enforcing the long-standing ban on sales of Atlantic billfish (while Pacific billfish were legal) will disappear.



*This briefing paper was prepared by **Wild Oceans**, , an independent non-profit group of anglers dedicated to protecting the ocean’s top predators – the billfish, tunas, swordfish, and sharks – while preserving healthy ocean food webs and critical habitats essential to the survival of all fish, marine mammals, sea turtles and seabirds.*

For more information visit wildoceans.org or call (703) 777-0037.

¹ Although there is no disagreement or conflict in the legislative history, it is worth noting that, according to the Congressional Research Service [Statutory Interpretation: General Principles and Recent Trends, March 30, 2006], “When the two Houses have disagreed on the meaning of identical language in a bill that did not go to conference, the explanation that was before both Houses (*i.e.*, the explanation of the originating House) prevails if the court relies on legislative history.”