

## **16 USC CHAPTER 38, SUBCHAPTER III: FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS**

### **From Title 16—CONSERVATION**

#### **CHAPTER 38—FISHERY CONSERVATION AND MANAGEMENT**

### **SUBCHAPTER III—FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS**

## **§1821. Foreign fishing**

### **(a) In general**

After February 28, 1977, no foreign fishing is authorized within the exclusive economic zone, or for anadromous species or Continental Shelf fishery resources beyond the exclusive economic zone, unless such foreign fishing—

- (1) is authorized under subsections (b) or (c) or section 1824(e) of this title, or under a permit issued under section 1824(d) of this title;
- (2) is not prohibited under subsection (f); and
- (3) is conducted under, and in accordance with, a valid and applicable permit issued pursuant to section 1824 of this title.

### **(b) Existing international fishery agreements**

Foreign fishing described in subsection (a) may be conducted pursuant to an international fishery agreement (subject to the provisions of section 1822(b) or (c) of this title), if such agreement—

- (1) was in effect on April 13, 1976; and
- (2) has not expired, been renegotiated, or otherwise ceased to be of force and effect with respect to the United States.

### **(c) Governing international fishery agreements**

Foreign fishing described in subsection (a) may be conducted pursuant to an international fishery agreement (other than a treaty) which meets the requirements of this subsection if such agreement becomes effective after application of section 1823 of this title. Any such international fishery agreement shall hereafter in this chapter be referred to as a "governing international fishery agreement". Each governing international fishery agreement shall acknowledge the exclusive fishery management authority of the United States, as set forth in this chapter. It is the sense of the Congress that each such agreement shall include a binding commitment, on the part of such foreign nation and its fishing vessels, to comply with the following terms and conditions:

- (1) The foreign nation, and the owner or operator of any fishing vessel fishing pursuant to such agreement, will abide by all regulations promulgated by the Secretary pursuant to this chapter, including any regulations promulgated to implement any applicable fishery management plan or any preliminary fishery management plan.
- (2) The foreign nation, and the owner or operator of any fishing vessel fishing pursuant to such agreement, will abide by the requirement that—
  - (A) any officer authorized to enforce the provisions of this chapter (as provided for in section 1861 of this title) be permitted—
    - (i) to board, and search or inspect, any such vessel at any time,
    - (ii) to make arrests and seizures provided for in section 1861(b) of this title whenever such officer has reasonable cause to believe, as a result of such a search or inspection, that any such vessel or any person has committed an act prohibited by section 1857 of this title, and
    - (iii) to examine and make notations on the permit issued pursuant to section 1824 of this title for such vessel;
  - (B) the permit issued for any such vessel pursuant to section 1824 of this title be prominently displayed in the wheelhouse of such vessel;
  - (C) transponders, or such other appropriate position-fixing and identification equipment as the Secretary of the department in which the Coast Guard is operating determines to be appropriate, be installed and maintained in working order on each such vessel;
  - (D) United States observers required under subsection (h) be permitted to be stationed aboard any such vessel and that all of the costs incurred incident to such stationing, including the costs of data editing and entry and observer monitoring, be paid for, in accordance with such subsection, by the owner or operator of the vessel;
  - (E) any fees required under section 1824(b)(10) of this title be paid in advance;
  - (F) agents be appointed and maintained within the United States who are authorized to receive and respond to any legal process issued in the United States with respect to such owner or operator; and
  - (G) responsibility be assumed, in accordance with any requirements prescribed by the Secretary, for the reimbursement of United States citizens for any loss of, or damage to, their fishing vessels, fishing gear, or catch

which is caused by any fishing vessel of that nation;

and will abide by any other monitoring, compliance, or enforcement requirement related to fishery conservation and management which is included in such agreement.

(3) The foreign nation and the owners or operators of all of the fishing vessels of such nation shall not, in any year, harvest an amount of fish which exceeds such nation's allocation of the total allowable level of foreign fishing, as determined under subsection (e).

(4) The foreign nation will—

(A) apply, pursuant to section 1824 of this title, for any required permits;

(B) deliver promptly to the owner or operator of the appropriate fishing vessel any permit which is issued under that section for such vessel;

(C) abide by, and take appropriate steps under its own laws to assure that all such owners and operators comply with, section 1824(a) of this title and the applicable conditions and restrictions established under section 1824(b) (7) of this title; and

(D) take, or refrain from taking, as appropriate, actions of the kind referred to in subsection (e)(1) in order to receive favorable allocations under such subsection.

#### **(d) Total allowable level of foreign fishing**

The total allowable level of foreign fishing, if any, with respect to any fishery subject to the exclusive fishery management authority of the United States, is that portion of the optimum yield of such fishery which cannot, or will not, be harvested by vessels of the United States, as determined in accordance with this chapter. Allocations of the total allowable level of foreign fishing are discretionary, except that the total allowable level shall be zero for fisheries determined by the Secretary to have adequate or excess domestic harvest capacity.

#### **(e) Allocation of allowable level**

(1)(A) The Secretary of State, in cooperation with the Secretary, may make allocations to foreign nations from the total allowable level of foreign fishing which is permitted with respect to each fishery subject to the exclusive fishery management authority of the United States.

(B) From the determinations made under subparagraph (A), the Secretary of State shall compute the aggregate of all of the fishery allocations made to each foreign nation.

(C) The Secretary of State shall initially release to each foreign nation for harvesting up to 50 percent of the allocations aggregate computed for such nation under subparagraph (B), and such release of allocation shall be apportioned by the Secretary of State, in cooperation with the Secretary, among the individual fishery allocations determined for that nation under subparagraph (A). The basis on which each apportionment is made under this subparagraph shall be stated in writing by the Secretary of State.

(D) After the initial release of fishery allocations under subparagraph (C) to a foreign nation, any subsequent release of an allocation for any fishery to such nation shall only be made—

(i) after the lapse of such period of time as may be sufficient for purposes of making the determination required under clause (ii); and

(ii) if the Secretary of State and the Secretary, after taking into account the size of the allocation for such fishery and the length and timing of the fishing season, determine in writing that such nation is complying with the purposes and intent of this paragraph with respect to such fishery.

If the foreign nation is not determined under clause (ii) to be in such compliance, the Secretary of State shall reduce, in a manner and quantity he considers to be appropriate (I) the remainder of such allocation, or (II) if all of such allocation has been released, the next allocation of such fishery, if any, made to such nation.

(E) The determinations required to be made under subparagraphs (A) and (D)(ii), and the apportionments required to be made under subparagraph (C), with respect to a foreign nation shall be based on—

(i) whether, and to what extent, such nation imposes tariff barriers or nontariff barriers on the importation, or otherwise restricts the market access, of both United States fish and fishery products, particularly fish and fishery products for which the foreign nation has requested an allocation;

(ii) whether, and to what extent, such nation is cooperating with the United States in both the advancement of existing and new opportunities for fisheries exports from the United States through the purchase of fishery products from United States processors, and the advancement of fisheries trade through the purchase of fish and fishery products from United States fishermen, particularly fish and fishery products for which the foreign nation has requested an allocation;

(iii) whether, and to what extent, such nation and the fishing fleets of such nation have cooperated with the United States in the enforcement of United States fishing regulations;

(iv) whether, and to what extent, such nation requires the fish harvested from the exclusive economic zone for its domestic consumption;

(v) whether, and to what extent, such nation otherwise contributes to, or fosters the growth of, a sound and economic United States fishing industry, including minimizing gear conflicts with fishing operations of United States fishermen, and transferring harvesting or processing technology which will benefit the United States fishing industry;

(vi) whether, and to what extent, the fishing vessels of such nation have traditionally engaged in fishing in such fishery;

(vii) whether, and to what extent, such nation is cooperating with the United States in, and making substantial contributions to, fishery research and the identification of fishery resources; and

(viii) such other matters as the Secretary of State, in cooperation with the Secretary, deems appropriate.

(2)(A) For the purposes of this paragraph—

(i) The term "certification" means a certification made by the Secretary that nationals of a foreign country, directly or indirectly, are conducting fishing operations or engaging in trade or taking which diminishes the effectiveness of the International Convention for the Regulation of Whaling. A certification under this section shall also be deemed a certification for the purposes of section 1978(a) of title 22.

(ii) The term "remedial period" means the 365-day period beginning on the date on which a certification is issued with respect to a foreign country.

(B) If the Secretary issues a certification with respect to any foreign country, then each allocation under paragraph (1) that—

(i) is in effect for that foreign country on the date of issuance; or

(ii) is not in effect on such date but would, without regard to this paragraph, be made to the foreign country within the remedial period;

shall be reduced by the Secretary of State, in consultation with the Secretary, by not less than 50 percent.

(C) The following apply for purposes of administering subparagraph (B) with respect to any foreign country:

(i) If on the date of certification, the foreign country has harvested a portion, but not all, of the quantity of fish specified under any allocation, the reduction under subparagraph (B) for that allocation shall be applied with respect to the quantity not harvested as of such date.

(ii) If the Secretary notified the Secretary of State that it is not likely that the certification of the foreign country will be terminated under section 1978(d) of title 22 before the close of the period for which an allocation is applicable or before the close of the remedial period (whichever close first occurs) the Secretary of State, in consultation with the Secretary, shall reallocate any portion of any reduction made under subparagraph (B) among one or more foreign countries for which no certification is in effect.

(iii) If the certification is terminated under such section 1978(d) of title 22 during the remedial period, the Secretary of State shall return to the foreign country that portion of any allocation reduced under subparagraph (B) that was not reallocated under clause (ii); unless the harvesting of the fish covered by the allocation is otherwise prohibited under this chapter.

(iv) The Secretary may refund or credit, by reason of reduction of any allocation under this paragraph, any fee paid under section 1824 of this title.

(D) If the certification of a foreign country is not terminated under section 1978(d) of title 22 before the close of the last day of the remedial period, the Secretary of State—

(i) with respect to any allocation made to that country and in effect (as reduced under subparagraph (B)) on such last day, shall rescind, effective on and after the day after such last day, any unharvested portion of such allocation; and

(ii) may not thereafter make any allocation to that country under paragraph (1) until the certification is terminated.

#### **(f) Reciprocity**

Foreign fishing shall not be authorized for the fishing vessels of any foreign nation unless such nation satisfies the Secretary and the Secretary of State that such nation extends substantially the same fishing privileges to fishing vessels of the United States, if any, as the United States extends to foreign fishing vessels.

#### **(g) Preliminary fishery management plans**

The Secretary, when notified by the Secretary of State that any foreign nation has submitted an application under section 1824(b) of this title shall prepare a preliminary fishery management plan for any fishery covered by such application if the Secretary determines that no fishery management plan for that fishery will be prepared and implemented, pursuant to subchapter IV, before March 1, 1977. To the extent practicable, each such plan—

(1) shall contain a preliminary description of the fishery and a preliminary determination as to—

(A) the optimum yield from such fishery;

(B) when appropriate, the capacity and extent to which United States fish processors will process that portion of such optimum yield that will be harvested by vessels of the United States; and

(C) the total allowable level of foreign fishing with respect to such fishery;

(2) shall require each foreign fishing vessel engaged or wishing to engage in such fishery to obtain a permit from the Secretary;

(3) shall require the submission of pertinent data to the Secretary, with respect to such fishery, as described in section 1853(a)(5) of this title; and

(4) may, to the extent necessary to prevent irreversible effects from overfishing, with respect to such fishery, contain conservation and management measures applicable to foreign fishing which—

(A) are determined to be necessary and appropriate for the conservation and management of such fishery,

- (B) are consistent with the national standards, the other provisions of this chapter, and other applicable law, and
- (C) are described in section 1853(b)(2), (3), (4), (5), and (7) of this title.

Each preliminary fishery management plan shall be in effect with respect to foreign fishing for which permits have been issued until a fishery management plan is prepared and implemented, pursuant to subchapter IV, with respect to such fishery. The Secretary may, in accordance with section 553 of title 5, also prepare and promulgate interim regulations with respect to any such preliminary plan. Such regulations shall be in effect until regulations implementing the applicable fishery management plan are promulgated pursuant to section 1855 of this title.

#### **(h) Full observer coverage program**

(1)(A) Except as provided in paragraph (2), the Secretary shall establish a program under which a United States observer will be stationed aboard each foreign fishing vessel while that vessel is engaged in fishing within the exclusive economic zone.

(B) The Secretary shall by regulation prescribe minimum health and safety standards that shall be maintained aboard each foreign fishing vessel with regard to the facilities provided for the quartering of, and the carrying out of observer functions by, United States observers.

(2) The requirement in paragraph (1) that a United States observer be placed aboard each foreign fishing vessel may be waived by the Secretary if he finds that—

(A) in a situation where a fleet of harvesting vessels transfers its catch taken within the exclusive economic zone to another vessel, aboard which is a United States observer, the stationing of United States observers on only a portion of the harvesting vessel fleet will provide a representative sampling of the by-catch of the fleet that is sufficient for purposes of determining whether the requirements of the applicable management plans for the by-catch species are being complied with;

(B) in a situation where the foreign fishing vessel is operating under a Pacific Insular Area fishing agreement, the Governor of the applicable Pacific Insular Area, in consultation with the Western Pacific Council, has established an observer coverage program or other monitoring program that the Secretary, in consultation with the Western Pacific Management Council, determines is adequate to monitor harvest, bycatch, and compliance with the laws of the United States by vessels fishing under the agreement;

(C) the time during which a foreign fishing vessel will engage in fishing within the exclusive economic zone will be of such short duration that the placing of a United States observer aboard the vessel would be impractical; or

(D) for reasons beyond the control of the Secretary, an observer is not available.

(3) Observers, while stationed aboard foreign fishing vessels, shall carry out such scientific, compliance monitoring, and other functions as the Secretary deems necessary or appropriate to carry out the purposes of this chapter; and shall cooperate in carrying out such other scientific programs relating to the conservation and management of living resources as the Secretary deems appropriate.

(4) In addition to any fee imposed under section 1824(b)(10) of this title and section 1980(e) of title 22 with respect to foreign fishing for any year after 1980, the Secretary shall impose, with respect to each foreign fishing vessel for which a permit is issued under such section 1824 of this title, a surcharge in an amount sufficient to cover all the costs of providing a United States observer aboard that vessel. The failure to pay any surcharge imposed under this paragraph shall be treated by the Secretary as a failure to pay the permit fee for such vessel under section 1824(b)(10) of this title. All surcharges collected by the Secretary under this paragraph shall be deposited in the Foreign Fishing Observer Fund established by paragraph (5).

(5) There is established in the Treasury of the United States the Foreign Fishing Observer Fund. The Fund shall be available to the Secretary as a revolving fund for the purpose of carrying out this subsection. The Fund shall consist of the surcharges deposited into it as required under paragraph (4). All payments made by the Secretary to carry out this subsection shall be paid from the Fund, only to the extent and in the amounts provided for in advance in appropriation Acts. Sums in the Fund which are not currently needed for the purposes of this subsection shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(6) If at any time the requirement set forth in paragraph (1) cannot be met because of insufficient appropriations, the Secretary shall, in implementing a supplementary observer program:

(A) certify as observers, for the purposes of this subsection, individuals who are citizens or nationals of the United States and who have the requisite education or experience to carry out the functions referred to in paragraph (3);

(B) establish standards of conduct for certified observers equivalent to those applicable to Federal personnel;

(C) establish a reasonable schedule of fees that certified observers or their agents shall be paid by the owners and operators of foreign fishing vessels for observer services; and

(D) monitor the performance of observers to ensure that it meets the purposes of this chapter.

#### **(i) Recreational fishing**

Notwithstanding any other provision of this subchapter, foreign fishing vessels which are not operated for profit may engage in recreational fishing within the exclusive economic zone and the waters within the boundaries of a State subject to obtaining such permits, paying such reasonable fees, and complying with such conditions and restrictions as the Secretary and the Governor of the State (or his designee) shall impose as being necessary or appropriate to insure that the fishing activity of such foreign vessels within such zone or waters, respectively, is consistent with all applicable Federal and State laws and any applicable fishery management plan implemented under section 1854 of this title. The

Secretary shall consult with the Secretary of State and the Secretary of the Department in which the Coast Guard is operating in formulating the conditions and restrictions to be applied by the Secretary under the authority of this subsection.

(Pub. L. 94–265, title II, §201, Apr. 13, 1976, 90 Stat. 337; Pub. L. 95–354, §4(1)–(4), Aug. 28, 1978, 92 Stat. 519, 520; Pub. L. 96–61, §3(a), Aug. 15, 1979, 93 Stat. 407; Pub. L. 96–118, §5, Nov. 16, 1979, 93 Stat. 860; Pub. L. 96–561, title II, §§230, 231(a), 236, Dec. 22, 1980, 94 Stat. 3296, 3297, 3299; Pub. L. 97–453, §2(a), Jan. 12, 1983, 96 Stat. 2481; Pub. L. 98–623, title IV, §404(1), (2), Nov. 8, 1984, 98 Stat. 3408; Pub. L. 99–386, title II, §206(a), Aug. 22, 1986, 100 Stat. 823; Pub. L. 99–659, title I, §§101(c)(2), 103(a), Nov. 14, 1986, 100 Stat. 3707, 3708; Pub. L. 101–627, title I, §104, Nov. 28, 1990, 104 Stat. 4439; Pub. L. 102–251, title III, §301(d), Mar. 9, 1992, 106 Stat. 63; Pub. L. 103–236, title I, §139(24), Apr. 30, 1994, 108 Stat. 399; Pub. L. 104–297, title I, §105(a), Oct. 11, 1996, 110 Stat. 3563; Pub. L. 109–479, §5, title IV, §404(a), Jan. 12, 2007, 120 Stat. 3578, 3632.)

#### AMENDMENT OF SECTION

*Pub. L. 102–251, title III, §§301(d), 308, Mar. 9, 1992, 106 Stat. 63, 66, provided that, effective on the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States, with authority to prescribe implementing regulations effective Mar. 9, 1992, but with no such regulation to be effective until the date on which the Agreement enters into force for the United States, this section is amended:*

- (1) in subsection (a), (A) by inserting "within the special areas," immediately before "or for anadromous species" and (B) by striking "beyond the exclusive economic zone" and inserting in lieu thereof "beyond such zone or areas";
- (2) in subsection (e)(1)(E)(IV)[iv], by inserting "or special areas" immediately after "exclusive economic zone";
- (3) in subsection (i), (A) by inserting "or special areas" immediately before the period at the end of paragraph (1)(A), (B) by inserting "or special areas" immediately after "exclusive economic zone" in paragraph (2)(A), and (C) by inserting "or special areas" immediately after "exclusive economic zone" in paragraph (2)(B); and
- (4) in subsection (j), (A) by inserting ", special areas," immediately after "exclusive economic zone", and (B) by inserting ", areas," immediately after "such zone".

#### EDITORIAL NOTES

#### REFERENCES IN TEXT

This chapter, referred to in subsecs. (c), (d), (e)(2)(C)(iii), (g), and (h)(3), (6)(D), was in the original "this Act", meaning Pub. L. 94–265, Apr. 13, 1976, 90 Stat. 331, known as the Magnuson-Stevens Fishery Conservation and Management Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

#### AMENDMENTS

**2007**—Subsec. (d). Pub. L. 109–479, §5, substituted "is" for "shall be" and "cannot, or will not," for "will not" and inserted at end "Allocations of the total allowable level of foreign fishing are discretionary, except that the total allowable level shall be zero for fisheries determined by the Secretary to have adequate or excess domestic harvest capacity."

Subsec. (h)(2)(B). Pub. L. 109–479, §404(a), substituted "or other monitoring program that the Secretary, in consultation with the Western Pacific Management Council, determines is adequate to monitor harvest, bycatch, and compliance with the laws of the United States by vessels fishing under the agreement;" for "that is at least equal in effectiveness to the program established by the Secretary;"

**1996**—Subsec. (a)(1), (2). Pub. L. 104–297, §105(a)(1), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

- "(1) is authorized under subsection (b) or (c) of this section;
- "(2) is not prohibited by subsection (g) of this section; and".

Subsec. (c)(2)(D). Pub. L. 104–297, §105(a)(2), substituted "subsection (h)" for "subsection (i)".

Subsec. (f). Pub. L. 104–297, §105(a)(3), (4), repealed subsec. (f) and redesignated subsec. (g) as (f). See 1994 Amendment note below.

Subsec. (g). Pub. L. 104–297, §105(a)(4), redesignated subsec. (h) as (g). Former subsec. (g) redesignated (f).

Subsec. (h). Pub. L. 104–297, §105(a)(4), redesignated subsec. (i) as (h). Former subsec. (h) redesignated (g).

Subsec. (h)(2)(B) to (D). Pub. L. 104–297, §105(a)(5), added subpar. (B) and redesignated former subpars. (B) and (C) as (C) and (D), respectively.

Subsec. (i). Pub. L. 104–297, §105(a)(4), (6), redesignated subsec. (j) as (i) and substituted "section 1854" for "section 1855". Former subsec. (i) redesignated (h).

Subsec. (j). Pub. L. 104–297, §105(a)(4), redesignated subsec. (j) as (i).

**1994**—Subsec. (f). Pub. L. 103–236 directed the repeal of section 201(f) of the Fishery Conservation and Management Act, 1976, which was executed by repealing subsec. (f) of this section which was section 201(f) of the Magnuson Fishery Conservation and Management Act. Prior to repeal, subsec. (f) read as follows: "The Secretary and the Secretary of State shall prepare and submit a report to the Congress and the President, not later than July 1 of each year, setting forth—

"(1) a list of species of all allocations made to foreign nations pursuant to subsection (e) of this section and all permits issued pursuant to section 1824(b)(6)(B) of this title; and

"(2) all tariff and nontariff trade barriers imposed by such nations on the importation of such species from the United States."

**1990**—Subsec. (d). Pub. L. 101–627 amended subsec. (d) generally, limiting the total allowable level of foreign fishing, with respect to any fishery subject to the exclusive management authority of the United States, to only that part of the potential fishery yield which is not harvested by United States fishermen and deleting the alternative method of determining the total allowable level of foreign fishing based on the annual fishing level for each harvesting season after the 1980 harvesting season.

**1986**—Subsecs. (a), (e)(1)(E)(iv). Pub. L. 99–659, §101(c)(2), substituted "exclusive economic zone" for "fishery conservation zone" in two places.

Subsec. (f). Pub. L. 99–386 substituted "The Secretary and the Secretary of State shall" for "The Secretary of the Treasury, in cooperation with the Secretary and the Secretary of State, shall".

Subsec. (i)(1). Pub. L. 99–659, §§101(c)(2), 103(a)(1), (2), designated existing provisions as subpar. (A), substituted "exclusive economic zone" for "fishery conservation zone", and added subpar. (B).

Subsec. (i)(2)(A). Pub. L. 99–659, §101(c)(2), substituted "exclusive economic zone" for "fishery conservation zone".

Subsec. (i)(2)(B). Pub. L. 99–659, §103(a)(3), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "with respect to any foreign fishing vessel while it is engaged in fishing within the fishery conservation zone—

"(i) the time during which the vessel engages in such fishing will be of such short duration that the placing of a United States observer aboard the vessel would be impractical, or

"(ii) the facilities of the vessel for the quartering of a United States observer, or for the carrying out of observer functions, are so inadequate or unsafe that the health or safety of an observer would be jeopardized; or"

Subsec. (j). Pub. L. 99–659, §101(c)(2), substituted "exclusive economic zone" for "fishery conservation zone".

**1984**—Subsec. (d)(4). Pub. L. 98–623, §404(1), substituted "may allocate" for "shall allocate" in provisions preceding subpar. (A).

Subsec. (e)(1)(A). Pub. L. 98–623, §404(2)(A), substituted "may make allocations to foreign nations from" for "shall determine the allocation among foreign nations of".

Subsec. (e)(1)(E)(i). Pub. L. 98–623, §404(2)(B), substituted "both United States fish and fishery products" for "United States fish or fishery products" and inserted ", particularly fish and fishery products for which the foreign nation has requested an allocation".

Subsec. (e)(1)(E)(ii). Pub. L. 98–623, §404(2)(C), amended provisions generally, thereby substituting "in both the advancement of existing and new opportunities for fisheries exports from the United States through the purchase of fishery products from United States processors, and the advancement of fisheries trade through the purchase of fish and fishery products from United States fishermen, particularly fish and fishery products for which the foreign nation has requested an allocation" for "in the advancement of existing and new opportunities for fisheries trade, particularly through the purchase of fish or fishery products from United States processors or from United States fishermen".

**1983**—Subsec. (c)(2)(D). Pub. L. 97–453, §2(a)(1), amended par. (D) generally, substituting "United States observers required under subsection (i) be permitted to be stationed aboard any such vessel and that all of the costs incurred incident to such stationing, including the costs of data editing and entry and observer monitoring, be paid for, in accordance with such subsection, by the owner or operator of the vessel" for "duly authorized United States observers be permitted on board any such vessel and that the United States be reimbursed for the cost of such observers".

Subsec. (c)(4)(D). Pub. L. 97–453, §2(a)(2), added subpar. (D).

Subsec. (d)(4). Pub. L. 97–453, §2(a)(3), substituted "may be allocated" for "shall be allocated" after "then such portion or part".

Subsec. (e)(1). Pub. L. 97–453, §2(a)(4), designated first sentence of existing provisions as subpar. (A), added subpars. (B), (C), and (D), and redesignated former subpars. (A) through (H) as cls. (i) through (viii) of subpar. (E), respectively.

Subsec. (i)(3). Pub. L. 97–453, §2(a)(5)(A)(i), substituted provision that observers, while stationed aboard foreign fishing vessels, shall carry out such scientific, compliance monitoring, and other functions as the Secretary deems necessary or appropriate to carry out the purposes of this chapter and shall cooperate

in carrying out such other scientific programs relating to the conservation and management of living resources as the Secretary deems appropriate, for provision that United States observers, while aboard foreign fishing vessels, were to carry out such scientific and other functions as the Secretary deemed necessary or appropriate to carry out the purposes of this chapter.

Subsec. (i)(6). Pub. L. 97-453, §2(a)(5)(A)(ii), added par. (6).

Subsec. (j). Pub. L. 97-453, §2(a)(6), added subsec. (j).

**1980**—Subsec. (d). Pub. L. 96-561, §230, designated existing provision as par. (2), substituted provision prescribing the total allowable level of foreign fishing with respect to any United States fishery for each harvesting season after the 1980 harvesting season as the level representing that portion of the optimum yield of such fishery that will not be harvested by vessels of the United States as determined in accordance with provisions of this chapter, other than those relating to the determination of annual fishing levels, or the annual fishing levels determined pursuant to par. (3) of this section for the harvesting season for provision prescribing the total allowable level of foreign fishing with respect to any fishery subject to the exclusive fishery management authority of the United States as that portion of the optimum yield of such fishery which will not be harvested by vessels of the United States, as determined in accordance with provisions of this chapter, and added pars. (1), (3), and (4).

Subsec. (e). Pub. L. 96-561, §231(a), substituted "All such determinations shall be made by the Secretary of State and the Secretary on the basis of" for "In making any such determination, the Secretary of State and the Secretary shall consider", added subpars. (A), (B), (D), and (E), redesignated former subpars. (A), (B), and (D) as (F), (G), and (H), respectively, and in subpar. (C) substituted determination where such nations and the fishing fleets of such nations have cooperated with the United States in enforcement of United States fishing regulations for determination where such nations have cooperated with the United States in enforcement and with respect to conservation and management of fishery resources.

Subsec. (i). Pub. L. 96-561, §236, added subsec. (i).

**1979**—Subsec. (e). Pub. L. 96-61 designated existing provisions as par. (1), redesignated pars. (1) through (4) as subpars. (A) to (D), and added par. (2).

Subsec. (e)(2)(D)(i). Pub. L. 96-118 substituted "unharvested" for "harvested".

**1978**—Subsec. (a)(2). Pub. L. 95-354, §4(1), substituted "(g)" for "(f)".

Subsec. (c)(3). Pub. L. 95-354, §4(2), substituted "harvest an amount of fish which exceeds" for "exceed".

Subsecs. (f) to (h). Pub. L. 95-354, §4(3), (4), added subsec. (f), redesignated former subsecs. (f) and (g) as (g) and (h), and in subsec. (h)(1), as so redesignated, set out existing provisions as cls. (A) and (C) and added cl. (B).

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-251 effective on date on which Agreement between United States and Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for United States, with authority to prescribe implementing regulations effective Mar. 9, 1992, but with no such regulation to be effective until date on which Agreement enters into force for United States, see section 308 of Pub. L. 102-251, set out as a note under section 773 of this title.

### EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97-453, §2(b), Jan. 12, 1983, 96 Stat. 2483, provided that: "The amendments made by subsection (a)(1) and (5)(A)(ii) [amending this section] shall take effect January 1, 1984."

### EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96-561, title II, §§231(b), 238(b), Dec. 22, 1980, 94 Stat. 3298, 3300, as amended by Pub. L. 104-208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to the 1981 harvesting season and harvesting seasons thereafter (as defined in section 201(d)(1) of the Magnuson-Stevens Fishery Conservation and Management Act, as amended by section 301) [subsec. (d)(1) of this section]."

Pub. L. 96-561, title II, §§237, 238(b), Dec. 22, 1980, 94 Stat. 3300, as amended by Pub. L. 104-208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that: "The amendment made by section 236 [amending this section] shall take effect October 1, 1981, and shall apply with respect to permits issued under section 204 of the Magnuson-Stevens Fishery Conservation and Management Act [section 1824 of this title] after December 31, 1981."



## **TRANSFER OF FUNCTIONS**

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

## **IMPLEMENTATION OF PACIFIC ALBACORE TUNA TREATY**

Pub. L. 108–219, [title IV, §401, Apr. 13, 2004](#), 118 Stat. 616, provided that:

"(a) **IN GENERAL.**—Notwithstanding anything to the contrary in section 201, 204, or 307(2) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1821, 1824, and 1857(2)), foreign fishing may be conducted pursuant to the Treaty between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges, signed at Washington May 26, 1981, including its Annexes and any amendments thereto.

"(b) **REGULATIONS.**—The Secretary of Commerce, with the concurrence of the Secretary of State, may—

"(1) promulgate regulations necessary to discharge the obligations of the United States under the Treaty and its Annexes; and

"(2) provide for the application of any such regulation to any person or vessel subject to the jurisdiction of the United States, wherever that person or vessel may be located.

"(c) **ENFORCEMENT.**—

"(1) **IN GENERAL.**—The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) shall be enforced as if subsection (a) were a provision of that Act. Any reference in the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) to 'this Act' or to any provision of that Act, shall be considered to be a reference to that Act as it would be in effect if subsection (a) were a provision of that Act.

"(2) **REGULATIONS.**—The regulations promulgated under subsection (b), shall be enforced as if—

"(A) subsection (a) were a provision of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.); and

"(B) the regulations were promulgated under that Act."

## **FOREIGN FISHING FOR ATLANTIC HERRING AND MACKEREL**

Pub. L. 104–43, [title VIII, §802, Nov. 3, 1995](#), 109 Stat. 396, as amended by Pub. L. 104–208, [div. A, title I, §101\(a\) \[title II, §211\(b\)\], Sept. 30, 1996](#), 110 Stat. 3009, [3009–41](#), provided that: "Notwithstanding any other provision of law—

"(1) no allocation may be made to any foreign nation or vessel under section 201 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) [16 U.S.C. 1821] in any fishery for which there is not a fishery management plan implemented in accordance with that Act [16 U.S.C. 1801 et seq.]; and

"(2) the Secretary of Commerce may not approve the portion of any permit application submitted under section 204(b) of the Act [16 U.S.C. 1824(b)] which proposes fishing by a foreign vessel for Atlantic mackerel or Atlantic herring unless—

"(A) the appropriate regional fishery management council recommends under section 204(b) (5) of that Act that the Secretary approve such fishing, and

"(B) the Secretary of Commerce includes in the permit any conditions or restrictions recommended by the appropriate regional fishery management council with respect to such fishing."

## **USE OF VESSEL IDENTIFICATION EQUIPMENT**

Pub. L. 100–629, [§6, Nov. 7, 1988](#), 102 Stat. 3287, as amended by Pub. L. 104–208, [div. A, title I, §101\(a\) \[title II, §211\(b\)\], Sept. 30, 1996](#), 110 Stat. 3009, [3009–41](#), provided that:

"(a) The Secretary of State, the Secretary of Commerce, and the Secretary of the department in which the Coast Guard is operating, as appropriate, shall exercise their authority under section 201(c)(2)(C) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1821) to require the use of transponders or other such appropriate position-fixing and identification equipment on any vessel other than a vessel of the United States engaged in fishing in the United States Exclusive Economic Zone.

"(b) The Secretary of Commerce, after consultation with the Secretary of Defense, the Secretary of State, and the Secretary of the department in which the Coast Guard is operating shall report to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science and Transportation of the Senate within 180 days after the date of enactment of this Act [Nov. 7, 1988] on the results of their compliance with subsection (a)."



## §1822. International fishery agreements

### (a) Negotiations

The Secretary of State—

- (1) shall renegotiate treaties as provided for in subsection (b);
- (2) shall negotiate governing international fishery agreements described in section 1821(c) of this title;
- (3) may negotiate boundary agreements as provided for in subsection (d);
- (4) shall, upon the request of and in cooperation with the Secretary, initiate and conduct negotiations for the purpose of entering into international fishery agreements—
  - (A) which allow fishing vessels of the United States equitable access to fish over which foreign nations assert exclusive fishery management authority, and
  - (B) which provide for the conservation and management of anadromous species and highly migratory species; and
- (5) may enter into such other negotiations, not prohibited by subsection (c), as may be necessary and appropriate to further the purposes, policy, and provisions of this chapter.

### (b) Treaty renegotiation

The Secretary of State, in cooperation with the Secretary, shall initiate, promptly after April 13, 1976, the renegotiation of any treaty which pertains to fishing within the exclusive economic zone (or within the area that will constitute such zone after February 28, 1977), or for anadromous species or Continental Shelf fishery resources beyond such zone or area, and which is in any manner inconsistent with the purposes, policy, or provisions of this chapter, in order to conform such treaty to such purposes, policy, and provisions. It is the sense of Congress that the United States shall withdraw from any such treaty, in accordance with its provisions, if such treaty is not so renegotiated within a reasonable period of time after April 13, 1976.

### (c) International fishery agreements

No international fishery agreement (other than a treaty) which pertains to foreign fishing within the exclusive economic zone (or within the area that will constitute such zone after February 28, 1977), or for anadromous species or Continental Shelf fishery resources beyond such zone or area—

- (1) which is in effect on June 1, 1976, may thereafter be renewed, extended, or amended; or
- (2) may be entered into after May 31, 1976;

by the United States unless it is in accordance with the provisions of section 1821(c) of this title or section 1824(e) of this title.

### (d) Boundary negotiations

The Secretary of State, in cooperation with the Secretary, may initiate and conduct negotiations with any adjacent or opposite foreign nation to establish the boundaries of the exclusive economic zone of the United States in relation to any such nation.

### (e) Highly migratory species agreements

#### (1) Evaluation

The Secretary of State, in cooperation with the Secretary, shall evaluate the effectiveness of each existing international fishery agreement which pertains to fishing for highly migratory species. Such evaluation shall consider whether the agreement provides for—

- (A) the collection and analysis of necessary information for effectively managing the fishery, including but not limited to information about the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the catch and bycatch levels in the fishery, and the present and probable future condition of any stock of fish involved;
- (B) the establishment of measures applicable to the fishery which are necessary and appropriate for the conservation and management of the fishery resource involved;
- (C) equitable arrangements which provide fishing vessels of the United States with (i) access to the highly migratory species that are the subject of the agreement and (ii) a portion of the allowable catch that reflects the traditional participation by such vessels in the fishery;
- (D) effective enforcement of conservation and management measures and access arrangements throughout the area of jurisdiction; and
- (E) sufficient and dependable funding to implement the provisions of the agreement, based on reasonable assessments of the benefits derived by participating nations.

#### (2) Access negotiations

The Secretary of State, in cooperation with the Secretary, shall initiate negotiations with respect to obtaining access for vessels of the United States fishing for tuna species within the exclusive economic zones of other nations on reasonable terms and conditions.

**(3) Reports**

The Secretary of State shall report to the Congress—

- (A) within 12 months after November 28, 1990, on the results of the evaluation required under paragraph (1), together with recommendations for addressing any inadequacies identified; and
- (B) within six months after November 28, 1990, on the results of the access negotiations required under paragraph (2).

**(4) Negotiation**

The Secretary of State, in consultation with the Secretary, shall undertake such negotiations with respect to international fishery agreements on highly migratory species as are necessary to correct inadequacies identified as a result of the evaluation conducted under paragraph (1).

**(5) South Pacific tuna treaty**

It is the sense of the Congress that the United States Government shall, at the earliest opportunity, begin negotiations for the purpose of extending the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, signed at Port Moresby, Papua New Guinea, April 2, 1987, and its <sup>1</sup> Annexes, Schedules, and implementing agreements for an additional term of 10 years on terms and conditions at least as favorable to vessels of the United States and the United States Government.

**(f) Nonrecognition**

It is the sense of the Congress that the United States Government shall not recognize the claim of any foreign nation to an exclusive economic zone (or the equivalent) beyond such nation's territorial sea, to the extent that such sea is recognized by the United States, if such nation—

- (1) fails to consider and take into account traditional fishing activity of fishing vessels of the United States;
- (2) fails to recognize and accept that highly migratory species are to be managed by applicable international fishery agreements, whether or not such nation is a party to any such agreement; or
- (3) imposes on fishing vessels of the United States any conditions or restrictions which are unrelated to fishery conservation and management.

**(g) Fishery agreement with Russia**

(1) The Secretary of State, in consultation with the Secretary, is authorized to negotiate and conclude a fishery agreement with Russia of a duration of no more than 3 years, pursuant to which—

- (A) Russia will give United States fishing vessels the opportunity to conduct traditional fisheries within waters claimed by the United States prior to the conclusion of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, west of the maritime boundary, including the western special area described in Article 3(2) of the Agreement;
- (B) the United States will give fishing vessels of Russia the opportunity to conduct traditional fisheries within waters claimed by the Union of Soviet Socialist Republics prior to the conclusion of the Agreement referred to in subparagraph (A), east of the maritime boundary, including the eastern special areas described in Article 3(1) of the Agreement;
- (C) catch data shall be made available to the government of the country exercising fisheries jurisdiction over the waters in which the catch occurred; and
- (D) each country shall have the right to place observers on board vessels of the other country and to board and inspect such vessels.

(2) Vessels operating under a fishery agreement negotiated and concluded pursuant to paragraph (1) shall be subject to regulations and permit requirements of the country in whose waters the fisheries are conducted only to the extent such regulations and permit requirements are specified in that agreement.

(3) The Secretary of Commerce may promulgate such regulations, in accordance with section 553 of title 5, as may be necessary to carry out the provisions of any fishery agreement negotiated and concluded pursuant to paragraph (1).

**(h) Bycatch reduction agreements**

(1) The Secretary of State, in cooperation with the Secretary, shall seek to secure an international agreement to establish standards and measures for bycatch reduction that are comparable to the standards and measures applicable to United States fishermen for such purposes in any fishery regulated pursuant to this chapter for which the Secretary, in consultation with the Secretary of State, determines that such an international agreement is necessary and appropriate.

- (2) An international agreement negotiated under this subsection shall be—
  - (A) consistent with the policies and purposes of this chapter; and
  - (B) subject to approval by Congress under section 1823 of this title.

(Pub. L. 94–265, title II, §202, Apr. 13, 1976, 90 Stat. 339; Pub. L. 99–659, title I, §101(c)(2), Nov. 14, 1986, 100 Stat. 3707; Pub. L. 101–627, title I, §§105(a), 120(a), Nov. 28, 1990, 104 Stat. 4439, 4459; Pub. L. 102–251, title III, §301(e), Mar. 9, 1992, 106 Stat. 63; Pub. L. 104–297, title I, §105(b), Oct. 11, 1996, 110 Stat. 3564; Pub. L. 117–328, div. S, title II, §205(b)(1)(A), Dec. 29, 2022, 136 Stat. 5270.)

**AMENDMENT OF SECTION**

*Pub. L. 102–251, title III, §§301(e)(1), (2), 308, Mar. 9, 1992, 106 Stat. 63, 66, provided that, effective on the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States, with authority to prescribe implementing regulations effective Mar. 9, 1992, but with no such regulation to be effective until the date on which the Agreement enters into force for the United States, this section is amended:*

*(1) in subsection (b), (A) by inserting "or special areas" immediately after "February 28, 1977)" and (B) by striking "such zone or area" and inserting in lieu thereof "such zone or areas"; and*

*(2) in subsection (c), (A) by inserting "or special areas" immediately after "February 28, 1977)" and (B) by striking "such zone or area" and inserting in lieu thereof "such zone or areas".*

**EDITORIAL NOTES****REFERENCES IN TEXT**

This chapter, referred to in subsecs. (a)(5), (b), and (h)(1), (2)(A), was in the original "this Act", meaning Pub. L. 94–265, [Apr. 13, 1976](#), 90 Stat. 331, known as the Magnuson-Stevens Fishery Conservation and Management Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

**AMENDMENTS**

**2022**—Subsec. (h)(3). Pub. L. 117–328 struck out par. (3) which read as follows: "Not later than January 1, 1997, and annually thereafter, the Secretary, in consultation with the Secretary of State, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a report describing actions taken under this subsection."

**1996**—Subsec. (c). Pub. L. 104–297, §105(b)(1), inserted before period at end "or section 1824(e) of this title".

Subsec. (h). Pub. L. 104–297, §105(b)(2), added subsec. (h).

**1992**—Subsec. (g). Pub. L. 102–251, §301(e)(3), added subsec. (g).

**1990**—Subsec. (e). Pub. L. 101–627, §105(a), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 101–627, §120(a), substituted "an exclusive economic" for "a exclusive economic".

Pub. L. 101–627, §105(a), redesignated former subsec. (e) as (f).

**1986**—Subsecs. (b) to (e). Pub. L. 99–659 substituted "exclusive economic zone" for "fishery conservation zone" wherever appearing.

**STATUTORY NOTES AND RELATED SUBSIDIARIES****CHANGE OF NAME**

Committee on Resources of House of Representatives changed to Committee on Natural Resources of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

**EFFECTIVE DATE OF 1992 AMENDMENT**

Amendment by section 301(e)(3) of Pub. L. 102–251 effective Mar. 9, 1992, and amendment by section 301(e)(1), (2), of Pub. L. 102–251 effective on date on which Agreement between United States and Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for United States, with authority to prescribe implementing regulations effective Mar. 9, 1992, but with no such regulation to be effective until date on which Agreement enters into force for United States, see section 308 of Pub. L. 102–251, set out as a note under section 773 of this title.

**SHARK FINNING PROHIBITION**

Pub. L. 106–557, [Dec. 21, 2000](#), 114 Stat. 2772, as amended by Pub. L. 109–479, [title III, §302\(c\), Jan. 12, 2007](#), 120 Stat. 3623, provided that:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Shark Finning Prohibition Act'.

"SEC. 2. PURPOSE.

"The purpose of this Act is to eliminate shark-finning by addressing the problem comprehensively at both the national and international levels.

"SEC. 3. PROHIBITION ON REMOVING SHARK FIN AND DISCARDING SHARK CARCASS AT SEA

"[Amended section 1857 of this title.]

"SEC. 4. REGULATIONS.

"No later than 180 days after the date of the enactment of this Act [Dec. 21, 2000], the Secretary of Commerce shall promulgate regulations implementing the provisions of section 3076(1)(P) [307(1)(P)] of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1857(1)(P)), as added by section 3 of this Act.

"SEC. 5. INTERNATIONAL NEGOTIATIONS.

"The Secretary of Commerce, acting through the Secretary of State, shall—

"(1) initiate discussions as soon as possible for the purpose of developing bilateral or multilateral agreements with other nations for the prohibition on shark-finning;

"(2) initiate discussions as soon as possible with all foreign governments which are engaged in, or which have persons or companies engaged in shark-finning, for the purposes of—

"(A) collecting information on the nature and extent of shark-finning by such persons and the landing or transshipment of shark fins through foreign ports; and

"(B) entering into bilateral and multilateral treaties with such countries to protect such species;

"(3) seek agreements calling for an international ban on shark-finning and other fishing practices adversely affecting these species through the United Nations, the Food and Agriculture Organization's Committee on Fisheries, and appropriate regional fishery management bodies;

"(4) initiate the amendment of any existing international treaty for the protection and conservation of species of sharks to which the United States is a party in order to make such treaty consistent with the purposes and policies of this section;

"(5) urge other governments involved in fishing for or importation of shark or shark products to fulfill their obligations to collect biological data, such as stock abundance and by-catch levels, as well as trade data, on shark species as called for in the 1995 Resolution on Cooperation with FAO with Regard to study on the Status of Sharks and By-Catch of Shark Species; and

"(6) urge other governments to prepare and submit their respective National Plan of Action for the Conservation and Management of Sharks to the 2001 session of the FAO Committee on Fisheries, as set forth in the International Plan of Action for the Conservation and Management of Sharks.

"SEC. 6. REPORT TO CONGRESS.

"The Secretary of Commerce, in consultation with the Secretary of State, shall provide to Congress, by not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000], and every year thereafter, a report which—

"(1) includes a list that identifies nations whose vessels conduct shark-finning and details the extent of the international trade in shark fins, including estimates of value and information on harvesting of shark fins, and landings or transshipment of shark fins through foreign ports;

"(2) describes the efforts taken to carry out this Act, and evaluates the progress of those efforts;

"(3) sets forth a plan of action to adopt international measures for the conservation of sharks; and

"(4) includes recommendations for measures to ensure that United States actions are consistent with national, international, and regional obligations relating to shark populations, including those listed under the Convention on International Trade in Endangered Species of Wild Flora and Fauna.

"SEC. 7. RESEARCH.

"The Secretary of Commerce, subject to the availability of appropriations authorized by section 10, shall establish a research program for Pacific and Atlantic sharks to engage in the following data collection and research:

"(1) The collection of data to support stock assessments of shark populations subject to incidental or directed harvesting by commercial vessels, giving priority to species according to vulnerability of the species to fishing gear and fishing mortality, and its population status.

"(2) Research to identify fishing gear and practices that prevent or minimize incidental catch of sharks in commercial and recreational fishing.

"(3) Research on fishing methods that will ensure maximum likelihood of survival of captured sharks after release.

"(4) Research on methods for releasing sharks from fishing gear that minimize risk of injury to fishing vessel operators and crews.

"(5) Research on methods to maximize the utilization of, and funding to develop the market for, sharks not taken in violation of a fishing management plan approved under section 303 or section 307(1)(P) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1853, 1857(1)(P)).

"(6) Research on the nature and extent of the harvest of sharks and shark fins by foreign fleets and the international trade in shark fins and other shark products.

**"SEC. 8. WESTERN PACIFIC LONGLINE FISHERIES COOPERATIVE RESEARCH PROGRAM.**

"The National Marine Fisheries Service, in consultation with the Western Pacific Fisheries Management Council, shall initiate a cooperative research program with the commercial longlining industry to carry out activities consistent with this Act, including research described in section 7 of this Act. The service [Service] may initiate such shark cooperative research programs upon the request of any other fishery management council.

**"SEC. 9. SHARK-FINNING DEFINED.**

"In this Act, the term 'shark-finning' means the taking of a shark, removing the fin or fins (whether or not including the tail) of a shark, and returning the remainder of the shark to the sea.

**"SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

"There are authorized to be appropriated to the Secretary of Commerce for fiscal years 2007 through 2011 such sums as are necessary to carry out this Act."

**CERTIFICATE OF LEGAL ORIGIN FOR ANADROMOUS FISH PRODUCTS**

Pub. L. 101-627, [title VIII, §801, Nov. 28, 1990](#), 104 Stat. 4464, provided that:

"(a) NEGOTIATIONS.—Within 60 days after the date of enactment of this Act [Nov. 28, 1990], the Secretary of State shall commence negotiations with nations which import or export anadromous fish or anadromous fish products for the purpose of securing general agreement among such nations to implement effective measures to prohibit international trade in anadromous fish or anadromous fish products unless such fish or fish products are accompanied by a valid certificate of legal origin attesting that the fish or fish product was lawfully harvested—

"(1) within the jurisdiction of a nation having naturally occurring or artificially established anadromous fish populations of the same species as the imported or exported product; or

"(2) on the high seas according to an international agreement among nations with jurisdiction over more than 1 percent of the stocks of anadromous fish being so harvested.

"(b) ISSUANCE OF CERTIFICATES.—For the purposes of subsection (a), a valid certificate of legal origin may be issued only by a nation which—

"(1) is the nation having jurisdiction over the vessel or other means by which the fish or fish product was harvested; and

"(2) maintains regular harvests of anadromous fish in a manner consistent with the criteria for lawful harvests set out in subsection (a).

"(c) BILATERAL OR MULTILATERAL AGREEMENTS.—Efforts undertaken by the Secretary of State pursuant to subsection (a) may, at the discretion of the Secretary, be directed toward achieving either bilateral or multilateral agreements, including trade agreements, whichever the Secretary determines to be most likely to result in the earliest possible date or dates of agreement by those nations which individually have in excess of \$1,000,000, or the equivalent, in import or export trade in anadromous fish and anadromous fish products.

"(d) REGULATIONS.—The Secretary of Commerce shall, within 180 days after the date of enactment of this Act [Nov. 28, 1990], promulgate regulations providing for—

"(1) the issuance of certificates of legal origin pursuant to agreements under subsection (a) for anadromous fish and anadromous fish products legally harvested by vessels of the United States; or

"(2) the delegation of the authority to issue certificates of legal origin to States, territories, or possessions of the United States which the Secretary of Commerce determines to have implemented a program which is sufficient to accomplish the purposes of subsection (a); and

"(3) an orderly transition to such regulations, sufficient to ensure that United States commerce in anadromous fish and anadromous fish products is not unduly disrupted.

"(e) REPORT REQUIRED.—The Secretary of Commerce, after consultation with the Secretary of the Treasury, shall, within 180 days after the date of enactment of this Act [Nov. 28, 1990], submit to the Congress a report—

"(1) making recommendations as to the need for the adoption of United States import and export restrictions on anadromous fish and anadromous fish products consistent with subsection (a); and

"(2) identifying, evaluating, and making recommendations regarding any specific statutory or regulatory changes that may be necessary for the adoption of such restrictions.

"(f) CERTIFICATION.—If, at any time following the promulgation of the regulations required by subsection (d), the Secretary of Commerce finds that any nation is engaging in trade in unlawfully taken anadromous fish or anadromous fish products, the Secretary shall certify that fact to the President, which certification

shall be deemed to be a certification for the purposes of section 8(a)(1) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)(1))."

## **DRIFTNET IMPACT MONITORING, ASSESSMENT, AND CONTROL**

Pub. L. 100–220, [title IV, Dec. 29, 1987](#), 101 Stat. 1477, as amended by Pub. L. 104–208, [div. A, title I, §101\(a\) \[title II, §211\(b\)\], Sept. 30, 1996](#), 110 Stat. 3009, [3009–41](#), provided that:

"SEC. 4001. SHORT TITLE.

"This title may be cited as the 'Driftnet Impact Monitoring, Assessment, and Control Act of 1987'.

"SEC. 4002. FINDINGS.

"The Congress finds that—

"(1) the use of long plastic driftnets is a fishing technique that may result in the entanglement and death of enormous numbers of target and nontarget marine resources in the waters of the North Pacific Ocean, including the Bering Sea;

"(2) there is a pressing need for detailed and reliable information on the number of marine resources that become entangled and die in actively fished driftnets and in driftnets that are lost, abandoned, or discarded; and

"(3) increased efforts are necessary to monitor, assess, and reduce the adverse impacts of driftnets.

"SEC. 4003. DEFINITIONS.

"As used in this title—

"(1) DRIFTNET.—The term 'driftnet' means a gillnet composed of a panel of plastic webbing one and one-half miles or more in length.

"(2) DRIFTNET FISHING.—The term 'driftnet fishing' means a fish-harvesting method in which a driftnet is placed in water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.

"(3) EXCLUSIVE ECONOMIC ZONE OF THE UNITED STATES.—The term 'exclusive economic zone of the United States' means the zone defined in section 3(6) [now 3(11)] of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802(b) [1802(11)]).

"(4) MARINE RESOURCES.—The term 'marine resources' includes fish, shellfish, marine mammals, seabirds, and other forms of marine life or waterfowl.

"(5) MARINE RESOURCES OF THE UNITED STATES.—The term 'marine resources of the United States' means—

"(A) marine resources found in, or which breed within, areas subject to the jurisdiction of the United States, including the exclusive economic zone of the United States; and

"(B) species of fish, wherever found, that spawn in the fresh or estuarine waters of the United States.

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

"SEC. 4004. MONITORING AGREEMENTS.

"(a) NEGOTIATIONS.—The Secretary, through the Secretary of State and in consultation with the Secretary of the Interior, shall immediately initiate, negotiations with each foreign government that conducts, or authorizes its nationals to conduct, driftnet fishing that results in the taking of marine resources of the United States in waters of the North Pacific Ocean outside of the exclusive economic zone and territorial sea of any nation, for the purpose of entering into agreements for statistically reliable cooperative monitoring and assessment of the numbers of marine resources of the United States killed and retrieved, discarded, or lost by the foreign government's driftnet fishing vessels. Such agreements shall provide for—

"(1) the use of a sufficient number of vessels from which scientists of the United States and the foreign governments may observe and gather statistically reliable information; and

"(2) appropriate methods for sharing equally the costs associated with such activities.

"(b) REPORT.—The Secretary, in consultation with the Secretary of State, shall provide to the Congress not later than 1 year after the date of enactment of this Act [Dec. 29, 1987] a full report on the results of negotiations under this section.

"SEC. 4005. IMPACT REPORT.

"(a) IN GENERAL.—The Secretary shall provide to the Congress within 1 year after the date of the enactment of this Act [Dec. 29, 1987], and at such other times thereafter as the Secretary considers appropriate, a report identifying the nature, extent, and effects of driftnet fishing in waters of the North Pacific Ocean on marine resources of the United States. The report shall include the best available information on—



- "(1) the number and flag state of vessels involved;
- "(2) the areas fished;
- "(3) the length, width, and mesh size of driftnets used;
- "(4) the number of marine resources of the United States killed by such fishing;
- "(5) the effect of seabird mortality, as determined by the Secretary of the Interior, on seabird populations; and

"(6) any other information the Secretary considers appropriate.

"(b) INFORMATION FROM FOREIGN GOVERNMENTS.—The Secretary, through the Secretary of State, shall—

"(1) request relevant foreign governments to provide the information described in subsection (a), and

"(2) include in a report under this section the information so provided and an evaluation of the adequacy and reliability of such information.

#### "SEC. 4006. ENFORCEMENT AGREEMENTS.

"(a) NEGOTIATIONS.—The Secretary shall immediately initiate, through the Secretary of State and in consultation with the Secretary of the Department in which the Coast Guard is operating negotiations with each foreign government that conducts, or authorizes its nationals to conduct, driftnet fishing that results in the taking of marine resources of the United States in waters of the North Pacific Ocean outside of the exclusive economic zone and territorial sea of any nation, for the purpose of entering into agreements for effective enforcement of laws, regulations, and agreements applicable to the location, season, and other aspects of the operations of the foreign government's driftnet fishing vessels. Such agreements shall include measures for—

- "(1) the effective monitoring and detection of violations;
- "(2) the collection and presentation of such evidence of violations as may be necessary for the successful prosecution of such violations by the responsible authorities;
- "(3) reporting to the United States of penalties imposed by the foreign governments for violations; and
- "(4) appropriate methods for sharing equally the costs associated with such activities.

"(b) CERTIFICATION FOR PURPOSES OF FISHERMEN'S PROTECTIVE ACT OF 1967.—If the Secretary, in consultation with the Secretary of State, determines that a foreign government has failed, within 18 months after the date of the enactment of this Act [Dec. 29, 1987], to enter into and implement an agreement under subsection (a) or section 4004(a) that is adequate, the Secretary shall certify such fact to the President, which certification shall be deemed to be a certification for the purposes of section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)).

#### "SEC. 4007. EVALUATIONS AND RECOMMENDATIONS.

"(a) MARKING, REGISTRY, AND IDENTIFICATION SYSTEM.—The Secretary shall evaluate, in consultation with officials of other Federal agencies and such other persons as may be appropriate, the feasibility of and develop recommendations for the establishment of a driftnet marking, registry, and identification system to provide a reliable method for the determination of the origin by vessel, of lost, discarded, or abandoned driftnets and fragments of driftnets. In conducting such evaluation, the Secretary shall consider the adequacy of existing driftnet identification systems of foreign nations and the extent to which these systems achieve the objectives of this title.

"(b) ALTERNATIVE DRIFTNET MATERIALS.—The Secretary, in consultation with such other persons as may be appropriate, shall evaluate the feasibility of, and develop appropriate recommendations for, the use of alternative materials in driftnets for the purpose of increasing the rate of decomposition of driftnets that are discarded or lost at sea.

"(c) DRIFTNET BOUNTY SYSTEM.—The Secretary, in consultation with such other persons as may be appropriate, shall evaluate the feasibility of and develop appropriate recommendations for the implementation of a driftnet bounty system to pay persons who retrieve from the exclusive economic zone and deposit with the Secretary lost, abandoned, and discarded driftnet and other plastic fishing material.

"(d) DRIFTNET FISHING VESSEL TRACKING SYSTEM.—The Secretary, in consultation with such other persons as may be appropriate, shall evaluate the feasibility of, and develop appropriate recommendations for, the establishment of a cooperative driftnet fishing vessel tracking system to facilitate efforts to monitor the location of driftnet fishing vessels.

"(e) REPORT.—The Secretary shall transmit to the Congress not later than 18 months after the date of the enactment of this Act [Dec. 29, 1987] a report setting forth—

- "(1) the evaluations and recommendations developed under subsections (a), (b), (c), and (d);
- "(2) the most effective and appropriate means of implementing such recommendations;
- "(3) any need for further research and development efforts and the estimated cost and time required for completion of such efforts; and
- "(4) any need for legislation to provide authority to carry out such recommendations.

"SEC. 4008. CONSTRUCTION WITH OTHER LAWS.

"This title [this note] shall not serve or be construed to expand or diminish the sovereign rights of the United States, as stated by Presidential Proclamation Numbered 5030, dated March 10, 1983 [16 U.S.C. 1453 note], and reflected in existing law on the date of the enactment of this Act [Dec. 29, 1987].

"SEC. 4009. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to the Department of Commerce and the Department of State, such sums as may be necessary to carry out the purposes of this title."

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

<sup>1</sup> So in original.

## **§1823. Congressional oversight of international fishery agreements**

### **(a) In general**

No governing international fishery agreement, bycatch reduction agreement, or Pacific Insular Area fishery agreement shall become effective with respect to the United States before the close of the first 120 days (excluding any days in a period for which the Congress is adjourned sine die) after the date on which the President transmits to the House of Representatives and to the Senate a document setting forth the text of such governing international fishery agreement, bycatch reduction agreement, or Pacific Insular Area fishery agreement. A copy of the document shall be delivered to each House of Congress on the same day and shall be delivered to the Clerk of the House of Representatives, if the House is not in session, and to the Secretary of the Senate, if the Senate is not in session.

### **(b) Referral to committees**

Any document described in subsection (a) shall be immediately referred in the House of Representatives to the Committee on Merchant Marine and Fisheries, and in the Senate to the Committees on Commerce, Science, and Transportation and on Foreign Relations.

### **(c) Congressional procedures**

#### **(1) Rules of the House of Representatives and Senate**

The provisions of this section are enacted by the Congress—

(A) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of fishery agreement resolutions described in paragraph (2), and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, and in the same manner and to the same extent as in the case of any other rule of that House.

#### **(2) "Fishery agreement resolution" defined**

For purposes of this subsection, the term "fishery agreement resolution" refers to a joint resolution of either House of Congress—

(A) the effect of which is to prohibit the entering into force and effect of any governing international fishery agreement, bycatch reduction agreement, or Pacific Insular Area fishery agreement the text of which is transmitted to the Congress pursuant to subsection (a); and

(B) which is reported from the Committee on Merchant Marine and Fisheries of the House of Representatives or the Committee on Commerce, Science, and Transportation or the Committee on Foreign Relations of the Senate, not later than 45 days after the date on which the document described in subsection (a) relating to that agreement is transmitted to the Congress.

#### **(3) Placement on calendar**

Any fishery agreement resolution upon being reported shall immediately be placed on the appropriate calendar.

#### **(4) Floor consideration in the House**

(A) A motion in the House of Representatives to proceed to the consideration of any fishery agreement resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate in the House of Representatives on any fishery agreement resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further

to limit debate shall not be debatable. It shall not be in order to move to recommit any fishery agreement resolution or to move to reconsider the vote by which any fishery agreement resolution is agreed to or disagreed to.

(C) Motions to postpone, made in the House of Representatives with respect to the consideration of any fishery agreement resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(D) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to any fishery agreement resolution shall be decided without debate.

(E) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of any fishery agreement resolution shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions in similar circumstances.

#### **(5) Floor consideration in the Senate**

(A) A motion in the Senate to proceed to the consideration of any fishery agreement resolution shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate in the Senate on any fishery agreement resolution and on all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(C) Debate in the Senate on any debatable motion or appeal in connection with any fishery agreement resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover of the motion or appeal and the manager of the resolution, except that if the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. The majority leader and the minority leader, or either of them, may allot additional time to any Senator during the consideration of any debatable motion or appeal, from time under their control with respect to the applicable fishery agreement resolution.

(D) A motion in the Senate to further limit debate is not debatable. A motion to recommit any fishery agreement resolution is not in order.

(Pub. L. 94–265, [title II, §203, Apr. 13, 1976](#), 90 Stat. 340; Pub. L. 103–437, [§6\(x\), Nov. 2, 1994](#), 108 Stat. 4587; Pub. L. 104–297, [title I, §105\(c\), Oct. 11, 1996](#), 110 Stat. 3564.)

### **EDITORIAL NOTES**

### **AMENDMENTS**

**1996**—Pub. L. 104–297, §105(c)(1), substituted "international" for "governing international" in section catchline.

Subsec. (a). Pub. L. 104–297, §105(c)(2), (3), inserted ", bycatch reduction agreement, or Pacific Insular Area fishery agreement" after "international fishery agreement" in two places and substituted "120 days (excluding any days in a period for which the Congress is adjourned sine die)" for "60 calendar days of continuous session of the Congress".

Subsec. (c). Pub. L. 104–297, §105(c)(4), (5), redesignated subsec. (d) as (c) and struck out heading and text of former subsec. (c). Text read as follows: "For purposes of subsection (a) of this section—

"(1) continuity of session is broken only by an adjournment of Congress sine die; and

"(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period."

Subsec. (c)(2)(A). Pub. L. 104–297, §105(c)(6), substituted "agreement, bycatch reduction agreement, or Pacific Insular Area fishery agreement" for "agreement".

Subsec. (d). Pub. L. 104–297, §105(c)(5), redesignated subsec. (d) as (c).

**1994**—Subsec. (b). Pub. L. 103–437, §6(x)(1), substituted "Commerce, Science, and Transportation and on" for "Commerce and".

Subsec. (d)(2)(B). Pub. L. 103–437, §6(x)(2), substituted "Commerce, Science, and Transportation" for "Commerce".

### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **SHORT TITLE OF 1995 AMENDMENT**

Pub. L. 104–43, [title V, §501, Nov. 3, 1995](#), 109 Stat. 391, provided that: "This title [amending provisions set out below] may be cited as the 'Sea of Okhotsk Fisheries Enforcement Act of 1995'."

### **ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES**

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

Committee on Merchant Marine and Fisheries of House of Representatives treated as referring to Committee on Resources of House of Representatives in case of provisions relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography by section 1(b)(3) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Resources of House of Representatives changed to Committee on Natural Resources of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

### **GOVERNING INTERNATIONAL FISHERY AGREEMENT WITH POLAND**

Pub. L. 105–384, [title I, §101, Nov. 13, 1998](#), 112 Stat. 3451, provided that: "Notwithstanding section 203 of the Magnuson-Stevens 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 Poland, as contained in the message to Congress from the President of the United States dated February 5, 1998, is approved as a governing international fishery agreement for the purposes of such Act [16 U.S.C. 1801 et seq.] and shall enter into force and effect with respect to the United States on the date of the enactment of this Act [Nov. 13, 1998]."

### **GOVERNING INTERNATIONAL FISHERY AGREEMENT WITH REPUBLIC OF ESTONIA**

Pub. L. 102–587, [title I, §1001, Nov. 4, 1992](#), 106 Stat. 5039, provided that the governing international fishery agreement between the Government of the United States of America and the Government of the Republic of Estonia, was approved by Congress as a governing international fishery agreement for purposes of this chapter and was to enter into force and effect with respect to the United States on Nov. 4, 1992.

### **FISHERIES ENFORCEMENT IN CENTRAL BERING SEA AND CENTRAL SEA OF OKHOTSK**

Pub. L. 102–582, [title III, Nov. 2, 1992](#), 106 Stat. 4906, as amended by Pub. L. 104–43, [title V, §502, Nov. 3, 1995](#), 109 Stat. 391; Pub. L. 104–208, [div. A, title I, §101\(a\) \[title II, §211\(b\)\], Sept. 30, 1996](#), 110 Stat. 3009, 3009–41, which provided that this title was to be cited as the "Central Bering Sea Fisheries Enforcement Act of 1992", prohibited vessels and nationals of United States from conducting fishing operations in Central Bering Sea and Central Sea of Okhotsk, except where such fishing operations were conducted in accordance with international fishery agreement to which United States and Russian Federation were parties, further provided for civil penalties and permit sanctions for violations of these provisions as well as authority to deny port privileges for fishing in Central Bering Sea, further authorized Secretary of Commerce to issue regulations restricting fishing in United States exclusive economic zone, and further provided for definition of terms and that this title would cease to have force and effect after the date that is seven years after Nov. 2, 1992, except that any proceeding with respect to violations occurring prior to such date was to be conducted as if these provisions were still in effect.

### **NORTH PACIFIC AND BERING SEA FISHERIES ADVISORY BODY**

Pub. L. 100–629, [§5, Nov. 7, 1988](#), 102 Stat. 3287, as amended by Pub. L. 114–327, [title I, §121\(a\), Dec. 16, 2016](#), 130 Stat. 1984; Pub. L. 117–286, [§4\(a\)\(115\), Dec. 27, 2022](#), 136 Stat. 4318, provided that:

"(a) IN GENERAL.—The Secretary of State shall establish an advisory body on the fisheries of the North Pacific and the Bering Sea, which shall advise the United States representative to the International Consultative Committee created in accordance with Article XIV of the governing international fishery agreement entered into between the United States and the Union of Soviet Socialist Republics, as contained in the message to Congress from the President of the United States dated June 22, 1988.

"(b) MEMBERSHIP.—

"(1) IN GENERAL.—The advisory body established pursuant to this section shall consist of 12 members, as follows:

"(A) The Director of the Department of Fisheries of the State of Washington.

"(B) The Commission of the Department of Fish and Game of the State of Alaska.

"(C) Five members appointed by the Secretary of State from among persons nominated by the Governor of Alaska on the basis of their knowledge and experience in commercial harvesting, processing, or marketing of fishery resources.

"(D) Five members appointed by the Secretary of State from among persons nominated by the Governor of Washington on the basis of their knowledge and experience in commercial harvesting, processing, or marketing of fishery resources.

"(2) NOMINATIONS.—The Governor of Alaska and the Governor of Washington shall each nominate 10 persons for purposes of paragraph (1).

"(c) PAY.—Members of the advisory body established pursuant to this section shall receive no pay by reason of their service as members of the advisory body.

"(d) EXEMPTION FROM CHAPTER 10 OF TITLE 5, UNITED STATES CODE.—Chapter 10 of title 5, United States Code, shall not apply to an advisory body established pursuant to this section.

"(e) TRAVEL EXPENSES.—

"(1) IN GENERAL.—The Secretary of State may pay the necessary travel expenses of the members of the advisory body established pursuant to this section in carrying out their service as such members in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code.

"(2) REIMBURSEMENT.—The Secretary of Commerce may reimburse the Secretary of State for amounts expended by the Secretary of State under this subsection."

## **GOVERNING INTERNATIONAL FISHERY AGREEMENT WITH RUSSIAN FEDERATION**

Pub. L. 103–206, [title VII, §701, Dec. 20, 1993](#), 107 Stat. 2446, as amended by Pub. L. 104–208, [div. A, title I, §101\(a\) \[title II, §211\(b\)\], Sept. 30, 1996](#), 110 Stat. 3009, [3009-41](#), provided that: "The Agreement between the Government of the United States of America and the Government of the Russian Federation on Mutual Fisheries Relations which was entered into on May 31, 1988, and which expired by its terms on October 28, 1993, may be brought into force again for the United States through an exchange of notes between the United States of America and the Russian Federation and may remain in force and effect on the part of the United States until May 1, 1994, and may be amended or extended by a subsequent agreement to which section 203 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1823) applies."

Pub. L. 100–629, [§1, Nov. 7, 1988](#), 102 Stat. 3286, provided that the governing international fishery agreement entered into between the Government of the United States and the Government of the Union of Soviet Socialist Republics was approved by Congress and was to enter into force and effect with respect to the United States on Nov. 7, 1988.

## **GOVERNING INTERNATIONAL FISHERY AGREEMENT WITH GERMAN DEMOCRATIC REPUBLIC**

Pub. L. 100–350, [§1, June 27, 1988](#), 102 Stat. 660, provided that extension of governing international fishery agreement between the Government of the United States of America and the Government of the German Democratic Republic was approved by Congress as a governing international fishery agreement for purposes of this chapter, and was to enter into force and effect with respect to the United States on June 27, 1988.

## **GOVERNING INTERNATIONAL FISHERY AGREEMENTS WITH ICELAND AND THE EUROPEAN ECONOMIC COMMUNITY**

Pub. L. 98–623, [title I, Nov. 8, 1984](#), 98 Stat. 3394, as amended by Pub. L. 104–208, [div. A, title I, §101\(a\) \[title II, §211\(b\)\], Sept. 30, 1996](#), 110 Stat. 3009, [3009-41](#), provided that: "Notwithstanding section 203 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1823) [this section]—

"(1) the governing international fishery agreement between the Government of the United States and the European Economic Community Concerning Fisheries Off the Coasts of the United States, as contained in the Message to Congress from the President of the United States dated August 27, 1984, is hereby approved by Congress as a governing international fishery agreement for purposes of that Act [this chapter], and may enter into force with respect to the United States in accordance with the terms of Article XIX of the agreement after the date of the enactment of this title [Nov. 8, 1984], upon signature of the agreement by both parties; and

"(2) the governing international fishery agreement between the Government of the United States and the Government of the Republic of Iceland Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated September 29, 1984, is hereby approved by Congress as a governing international fishery agreement for purposes of that Act [this chapter], and may enter into force with respect to the United States in accordance with the terms of Article XVI of the agreement after the date of the enactment of this title [Nov. 8, 1984]."

## **GOVERNING INTERNATIONAL FISHERY AGREEMENT WITH FAROE ISLANDS AND DENMARK**

Pub. L. 98–498, [title IV, §440, Oct. 19, 1984](#), 98 Stat. 2310, as amended by Pub. L. 104–208, [div. A, title I, §101\(a\) \[title II, §211\(b\)\], Sept. 30, 1996](#), 110 Stat. 3009, [3009-41](#), provided that: "Notwithstanding section 203 of the Magnuson-Stevens Fishery Conservation and Management Act of 1976 [this section], the Governing International Fishery Agreement between the Government of the United States of America of



the One Part and the Home Government of the Faroe Islands and the Government of Denmark of the Other Part Concerning Faroese Fishing in Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated July 13, 1984—

"(1) is approved by Congress as a governing international fishery agreement for purposes of that Act [this chapter]; and

"(2) may enter into force with respect to the United States in accordance with the terms of Article XVI of the Agreement following the enactment of this title [Oct. 19, 1984]."

### **GOVERNING INTERNATIONAL FISHERY AGREEMENT WITH JAPAN**

Pub. L. 101–224, §7, Dec. 12, 1989, 103 Stat. 1907, provided that the governing international fishery agreement entered into between the Government of the United States and the Government of Japan was approved by Congress and was to enter into force and effect with respect to the United States on Dec. 12, 1989.

Pub. L. 100–220, title I, §1001, Dec. 29, 1987, 101 Stat. 1459, provided that the governing international fishery agreement between the Government of the United States of America and the Government of Japan Concerning Fisheries Off the Coasts of the United States was approved by Congress as a governing international fishery agreement for the purposes of this chapter, and was to enter into force and effect with respect to the United States on Dec. 29, 1987.

Pub. L. 97–389, title IV, §401, Dec. 29, 1982, 96 Stat. 1954, provided that the governing international fishery agreement entered into between the Government of the United States and the Government of Japan pursuant to this chapter, signed at Washington on Sept. 10, 1982, was approved, and was effective on Jan. 1, 1983.

### **GOVERNING INTERNATIONAL FISHERY AGREEMENT WITH SPAIN**

Pub. L. 97–389, title IV, §402, Dec. 29, 1982, 96 Stat. 1954, provided for approval of the governing international fishery agreement entered into between the Government of the United States and the Government of Spain pursuant to this chapter.

### **GOVERNING INTERNATIONAL FISHERY AGREEMENT WITH PORTUGAL**

Pub. L. 96–561, title I, §145, title II, §238(b), Dec. 22, 1980, 94 Stat. 3287, 3300, provided that the governing international fishery agreement between the Government of the United States of America and the Government of Portugal Concerning Fisheries Off the Coasts of the United States was approved by Congress as a governing international fishery agreement for the purposes of this chapter, and was to enter into force and effect with respect to the United States on Dec. 22, 1980.

### **EXTENSION OF INTERNATIONAL FISHERY AGREEMENTS**

Pub. L. 100–66, §1, July 10, 1987, 101 Stat. 384, provided that the governing international fishery agreement entered into between the Government of the United States and the Government of the Republic of Korea on July 26, 1982, was to remain in force and effect with respect to the United States until the closing date of the sixty-day period referred to in subsec. (a) of this section that applied with respect to any new governing international fishery agreement between the United States and the Republic of Korea that was transmitted to the Congress under subsec. (a) of this section after May 1, 1987, or Nov. 1, 1987, whichever was earlier.

Pub. L. 98–364, title I, §106, July 17, 1984, 98 Stat. 442, provided that upon certification by Secretary of State to President of the Senate and Speaker of the House of Representatives that a new governing international fishery agreement in conformity with this chapter had been negotiated by the United States and the European Economic Community, the existing governing international fishery agreement referred to in section 2(a)(7) of Pub. L. 95–6, formerly set out below, could be extended or reinstated and could be in force and effect with respect to the United States, for the period of time ending on the earlier of (1) the effective date of the new governing international fishery agreement, or (2) Sept. 30, 1984.

Pub. L. 97–212, §10(b), June 30, 1982, 96 Stat. 148, provided that the governing international fishery agreements referred to in section 2(a)(9) and (10) of Pub. L. 95–6, formerly set out below, were to be extended, and were to be in force and effect with respect to the United States, for the period of time ending on the deadline for completion of congressional review, pursuant to subsec. (a) of this section, of any new governing international fishery agreement signed, on or before July 31, 1982, by the United States and the respective foreign government that was a party to the agreement in question, or July 31, 1982, if the United States and the respective foreign government that was a party to the agreement in question failed to sign a new governing international fishery agreement on or before that date.



## **CONGRESSIONAL APPROVAL OF CERTAIN GOVERNING INTERNATIONAL FISHERY AGREEMENTS**

Pub. L. 95–6, §2, Feb. 21, 1977, 91 Stat. 15, as amended by Pub. L. 95–8, §1, Mar. 3, 1977, 91 Stat. 18; Pub. L. 95–219, §1, Dec. 28, 1977, 91 Stat. 1613; Pub. L. 96–561, title II, §238(b), Dec. 22, 1980, 94 Stat. 3300; Pub. L. 97–212, §10(a), June 30, 1982, 96 Stat. 148; Pub. L. 98–44, title I, §105, July 12, 1983, 97 Stat. 217; Pub. L. 98–364, title I, §105, July 17, 1984, 98 Stat. 442, provided for the approval by Congress, as a governing international fishery agreement for purposes of this chapter, of the governing international fishery agreement between—

- (1) the Government of the United States and the Government of the People's Republic of Bulgaria Concerning Fisheries Off the Coasts of the United States;
  - (2) the Government of the United States and the Government of the Socialist Republic of Romania Concerning Fisheries Off the Coasts of the United States;
  - (3) the Government of the United States and the Government of the Republic of China Concerning Fisheries Off the Coasts of the United States;
  - (4) the Government of the United States and the Government of the German Democratic Republic Concerning Fisheries Off the Coasts of the United States;
  - (5) the Government of the United States and the Government of the Union of Soviet Socialist Republics Concerning Fisheries Off the Coasts of the United States;
  - (6) the Government of the United States and the Government of the Polish People's Republic Concerning Fisheries Off the Coasts of the United States;
  - (7) the Government of the United States and the European Economic Community Concerning Fisheries Off the Coasts of the United States;
  - (8) the Government of the United States and the Government of Japan Concerning Fisheries Off the Coasts of the United States (for 1977);
  - (9) the Government of the United States and the Government of the Republic of Korea Concerning Fisheries Off the Coasts of the United States;
  - (10) the Government of the United States and the Government of Spain Concerning Fisheries Off the Coasts of the United States;
  - (11) the Government of the United States and the Government of Mexico Concerning Fisheries Off the Coasts of the United States;
  - (12) the Government of the United States and the Government of the Union of Soviet Socialist Republics referred to in par. (5), as extended until July 1, 1983, pursuant to Diplomatic Notes;
  - (13) the American Institute in Taiwan and the Coordination Council for North American Affairs;
  - (14) the Government of the United States and the Government of the Polish People's Republic referred to in par. (6), as extended until July 1, 1983, pursuant to Diplomatic Notes;
  - (15) the Government of the United States and the Government of the Union of Soviet Socialist Republics referred to in par. (5), as extended until Dec. 31, 1985, pursuant to Diplomatic Notes;
  - (16) the Government of the United States and the Government of the Polish People's Republic referred to in par. (6), as extended until Dec. 31, 1985, pursuant to Diplomatic Notes; and
  - (17) the Government of the United States and the Government of the German Democratic Republic referred to in par. (4);
- and provided further that the agreements referred to in pars. (1) to (6) were to enter into force and effect with respect to the United States on Feb. 21, 1977, that the agreements referred to in pars. (7) to (11) were to enter into force and effect with respect to the United States on Feb. 27, 1977, that the agreements referred to in pars. (12) to (14) were to enter into force and effect with respect to the United States on July 1, 1982, that the agreements referred to in pars. (15) and (16) were to enter into force and effect with respect to the United States on July 1, 1984, and that the agreement referred to in par. (17) was to enter into force and effect with respect to the United States on July 1, 1983.

### **RECIPROCAL FISHERIES AGREEMENT BETWEEN UNITED STATES AND CANADA**

Pub. L. 95–6, §5, as added Pub. L. 95–73, July 27, 1977, 91 Stat. 283; amended Pub. L. 95–314, July 1, 1978, 92 Stat. 376; Pub. L. 96–561, title II, §238(b), Dec. 22, 1980, 94 Stat. 3300, provided for congressional approval of the Reciprocal Fisheries Agreement for 1978 between the Government of the United States and the Government of Canada, and that the Agreement was to be in force and effect with respect to the United States from Jan. 1, 1978, until such later date in 1978 as was to be determined pursuant to the terms of the Agreement.

## **§1824. Permits for foreign fishing**

**(a) In general**

After February 28, 1977, no foreign fishing vessel shall engage in fishing within the exclusive economic zone, or for anadromous species or Continental Shelf fishery resources beyond such zone, unless such vessel has on board a valid permit issued under this section for such vessel.

**(b) Applications and permits under governing international fishery agreements****(1) Eligibility; duration**

Each foreign nation with which the United States has entered into a governing international fishery agreement shall submit an application to the Secretary of State each year for a permit for each of its fishing vessels that wishes to engage in fishing described in subsection (a). No permit issued under this section may be valid for longer than a year; and section 558(c) of title 5 does not apply to the renewal of any such permit.

**(2) Forms**

The Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall prescribe the forms for permit applications submitted under this subsection and for permits issued pursuant to any such application.

**(3) Contents**

Any application made under this subsection shall specify—

- (A) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof;
- (B) the tonnage, hold capacity, speed, processing equipment, type and quantity of fishing gear, and such other pertinent information with respect to characteristics of each such vessel as the Secretary may require;
- (C) each fishery in which each such vessel wishes to fish;
- (D) the estimated amount of tonnage of fish which will be caught, taken, or harvested in each such fishery by each such vessel during the time the permit is in force;
- (E) the amount or tonnage of United States harvested fish, if any, which each such vessel proposes to receive at sea from vessels of the United States;
- (F) the ocean area in which, and the season or period during which, such fishing will be conducted; and
- (G) all applicable vessel safety standards imposed by the foreign country, and shall include written certification that the vessel is in compliance with those standards;

and shall include any other pertinent information and material which the Secretary may require.

**(4) Transmittal for action**

Upon receipt of any application which complies with the requirements of paragraph (3), the Secretary of State shall publish a notice of receipt of the application in the Federal Register. Any such notice shall summarize the contents of the applications from each nation included therein with respect to the matters described in paragraph (3). The Secretary of State shall promptly transmit—

- (A) such application, together with his comments and recommendations thereon, to the Secretary;
- (B) a copy of the application to the Secretary of the department in which the Coast Guard is operating; and
- (C) a copy or a summary of the application to the appropriate Council.

**(5) Action by Council**

After receiving a copy or summary of an application under paragraph (4)(C), the Council may prepare and submit to the Secretary such written comments on the application as it deems appropriate. Such comments shall be submitted within 45 days after the date on which the application is received by the Council and may include recommendations with respect to approval of the application and, if approval is recommended, with respect to appropriate conditions and restrictions thereon. Any interested person may submit comments to such Council with respect to any such application. The Council shall consider any such comments in formulating its submission to the Secretary.

**(6) Approval**

(A) After receipt of any application transmitted under paragraph (4)(A), the Secretary shall consult with the Secretary of State and, with respect to enforcement, with the Secretary of the department in which the Coast Guard is operating. The Secretary, after taking into consideration the views and recommendations of such Secretaries, and any comments submitted by any Council under paragraph (5), may approve, subject to subparagraph (B), the application, if he determines that the fishing described in the application will meet the requirements of this chapter, or he may disapprove all or any portion of the application.

(B)(i) In the case of any application which specifies that one or more foreign fishing vessels propose to receive at sea United States harvested fish from vessels of the United States, the Secretary may approve the application unless the Secretary determines, on the basis of the views, recommendations, and comments referred to in subparagraph (A) and other pertinent information, that United States fish processors have adequate capacity, and will utilize such capacity, to process all United States harvested fish from the fishery concerned.

(ii) The amount or tonnage of United States harvested fish which may be received at sea during any year by foreign fishing vessels under permits approved under this paragraph may not exceed that portion of the optimum

yield of the fishery concerned which will not be utilized by United States fish processors.

(iii) In deciding whether to approve any application under this subparagraph, the Secretary may take into account, with respect to the foreign nation concerned, such other matters as the Secretary deems appropriate.

## **(7) Establishment of conditions and restrictions**

The Secretary shall establish conditions and restrictions which shall be included in each permit issued pursuant to any application approved under paragraph (6) or subsection (d) and which must be complied with by the owner or operator of the fishing vessel for which the permit is issued. Such conditions and restrictions shall include the following:

(A) All of the requirements of any applicable fishery management plan, or preliminary fishery management plan, and any applicable Federal or State fishing regulations.

(B) The requirement that no permit may be used by any vessel other than the fishing vessel for which it is issued.

(C) The requirements described in section 1821(c)(1), (2), and (3) of this title.

(D) If the permit is issued other than pursuant to an application approved under paragraph (6)(B) or subsection (d), the restriction that the foreign fishing vessel may not receive at sea United States harvested fish from vessels of the United States.

(E) If the permit is issued pursuant to an application approved under paragraph (6)(B), the maximum amount or tonnage of United States harvested fish which may be received at sea from vessels of the United States.

(F) Any other condition and restriction related to fishery conservation and management which the Secretary prescribes as necessary and appropriate.

## **(8) Notice of approval**

The Secretary shall promptly transmit a copy of each application approved under paragraph (6) and the conditions and restrictions established under paragraph (7) to—

(A) the Secretary of State for transmittal to the foreign nation involved;

(B) the Secretary of the department in which the Coast Guard is operating; and

(C) any Council which has authority over any fishery specified in such application.

## **(9) Disapproval of applications**

If the Secretary does not approve any application submitted by a foreign nation under this subsection, he shall promptly inform the Secretary of State of the disapproval and his reasons therefore. The Secretary of State shall notify such foreign nation of the disapproval and the reasons therefor. Such foreign nation, after taking into consideration the reasons for disapproval, may submit a revised application under this subsection.

## **(10) Fees**

(A) Fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit has been issued pursuant to this section. The Secretary, in consultation with the Secretary of State, shall establish a schedule of reasonable fees that shall apply nondiscriminatorily to each foreign nation.

(B) Amounts collected by the Secretary under this paragraph shall be deposited in the general fund of the Treasury.

## **(11) Issuance of permits**

If a foreign nation notifies the Secretary of State of its acceptance of the conditions and restrictions established by the Secretary under paragraph (7), the Secretary of State shall promptly transmit such notification to the Secretary. Upon payment of the applicable fees established pursuant to paragraph (10), the Secretary shall thereupon issue to such foreign nation, through the Secretary of State, permits for the appropriate fishing vessels of that nation. Each permit shall contain a statement of all conditions and restrictions established under paragraph (7) which apply to the fishing vessel for which the permit is issued.

## **(c) Registration permits**

The Secretary of State, in cooperation with the Secretary, shall issue annually a registration permit for each fishing vessel of a foreign nation which is a party to an international fishery agreement under which foreign fishing is authorized by section 1821(b) of this title and which wishes to engage in fishing described in subsection (a). Each such permit shall set forth the terms and conditions contained in the agreement that apply with respect to such fishing, and shall include the additional requirement that the owner or operator of the fishing vessel for which the permit is issued shall prominently display such permit in the wheelhouse of such vessel and show it, upon request, to any officer authorized to enforce the provisions of this chapter (as provided for in section 1861 of this title). The Secretary of State, after consultation with the Secretary and the Secretary of the department in which the Coast Guard is operating, shall prescribe the form and manner in which applications for registration permits may be made, and the forms of such permits. The Secretary of State may establish, require the payment of, and collect fees for registration permits; except that the level of such fees shall not exceed the administrative costs incurred by him in issuing such permits.

## **(d) Transshipment permits**

### **(1) Authority to issue permits**

The Secretary may issue a transshipment permit under this subsection which authorizes a vessel other than a vessel of the United States to engage in fishing consisting solely of transporting fish or fish products at sea from a

point within the exclusive economic zone or, with the concurrence of a State, within the boundaries of that State, to a point outside the United States to any person who—

- (A) submits an application which is approved by the Secretary under paragraph (3); and
- (B) pays a fee imposed under paragraph (7).

## **(2) Transmittal**

Upon receipt of an application for a permit under this subsection, the Secretary shall promptly transmit copies of the application to the Secretary of State, Secretary of the department in which the Coast Guard is operating, any appropriate Council, and any affected State.

## **(3) Approval of application**

The Secretary may approve, in consultation with the appropriate Council or Marine Fisheries Commission, an application for a permit under this section if the Secretary determines that—

- (A) the transportation of fish or fish products to be conducted under the permit, as described in the application, will be in the interest of the United States and will meet the applicable requirements of this chapter;
- (B) the applicant will comply with the requirements described in section 1821(c)(2) of this title with respect to activities authorized by any permit issued pursuant to the application;
- (C) the applicant has established any bonds or financial assurances that may be required by the Secretary; and
- (D) no owner or operator of a vessel of the United States which has adequate capacity to perform the transportation for which the application is submitted has indicated to the Secretary an interest in performing the transportation at fair and reasonable rates.

## **(4) Whole or partial approval**

The Secretary may approve all or any portion of an application under paragraph (3).

## **(5) Failure to approve application**

If the Secretary does not approve any portion of an application submitted under paragraph (1), the Secretary shall promptly inform the applicant and specify the reasons therefor.

## **(6) Conditions and restrictions**

The Secretary shall establish and include in each permit under this subsection conditions and restrictions, including those conditions and restrictions set forth in subsection (b)(7), which shall be complied with by the owner and operator of the vessel for which the permit is issued.

## **(7) Fees**

The Secretary shall collect a fee for each permit issued under this subsection, in an amount adequate to recover the costs incurred by the United States in issuing the permit, except that the Secretary shall waive the fee for the permit if the foreign nation under which the vessel is registered does not collect a fee from a vessel of the United States engaged in similar activities in the waters of such foreign nation.

# **(e) Pacific Insular Areas**

## **(1) Negotiation of Pacific Insular Area fishery agreements**

The Secretary of State, with the concurrence of the Secretary and in consultation with any appropriate Council, may negotiate and enter into a Pacific Insular Area fishery agreement to authorize foreign fishing within the exclusive economic zone adjacent to a Pacific Insular Area—

- (A) in the case of American Samoa, Guam, or the Northern Mariana Islands, at the request and with the concurrence of, and in consultation with, the Governor of the Pacific Insular Area to which such agreement applies; and
- (B) in the case of a Pacific Insular Area other than American Samoa, Guam, or the Northern Mariana Islands, at the request of the Western Pacific Council.

## **(2) Agreement terms and conditions**

A Pacific Insular Area fishery agreement—

- (A) shall not be considered to supersede any governing international fishery agreement currently in effect under this chapter, but shall provide an alternative basis for the conduct of foreign fishing within the exclusive economic zone adjacent to Pacific Insular Areas;
- (B) shall be negotiated and implemented consistent only with the governing international fishery agreement provisions of this subchapter specifically made applicable in this subsection;
- (C) may not be negotiated with a nation that is in violation of a governing international fishery agreement in effect under this chapter;
- (D) shall not be entered into if it is determined by the Governor of the applicable Pacific Insular Area with respect to agreements initiated under paragraph (1)(A), or the Western Pacific Council with respect to agreements initiated under paragraph (1)(B), that such an agreement will adversely affect the fishing activities of the indigenous people of such Pacific Insular Area;
- (E) shall be valid for a period not to exceed three years and shall only become effective according to the procedures in section 1823 of this title; and

(F) shall require the foreign nation and its fishing vessels to comply with the requirements of paragraphs (1), (2), (3) and (4)(A) of section 1821(c) of this title, section 1821(d) of this title, and section 1821(h) of this title.

### **(3) Permits for foreign fishing**

(A) Application for permits for foreign fishing authorized under a Pacific Insular Areas fishing agreement shall be made, considered and approved or disapproved in accordance with paragraphs (3), (4), (5), (6), (7)(A) and (B), (8), and (9) of subsection (b), and shall include any conditions and restrictions established by the Secretary in consultation with the Secretary of State, the Secretary of the department in which the Coast Guard is operating, the Governor of the applicable Pacific Insular Area, and the appropriate Council.

(B) If a foreign nation notifies the Secretary of State of its acceptance of the requirements of this paragraph, paragraph (2)(F), and paragraph (5), including any conditions and restrictions established under subparagraph (A), the Secretary of State shall promptly transmit such notification to the Secretary. Upon receipt of any payment required under a Pacific Insular Area fishing agreement, the Secretary shall thereupon issue to such foreign nation, through the Secretary of State, permits for the appropriate fishing vessels of that nation. Each permit shall contain a statement of all of the requirements, conditions, and restrictions established under this subsection which apply to the fishing vessel for which the permit is issued.

### **(4) Marine conservation plans**

(A) Prior to entering into a Pacific Insular Area fishery agreement, the Western Pacific Council and the appropriate Governor shall develop a 3-year marine conservation plan detailing uses for funds to be collected by the Secretary pursuant to such agreement. Such plan shall be consistent with any applicable fishery management plan, identify conservation and management objectives (including criteria for determining when such objectives have been met), and prioritize planned marine conservation projects. Conservation and management objectives shall include, but not be limited to—

(i) Pacific Insular Area observer programs, or other monitoring programs, that the Secretary determines are adequate to monitor the harvest, bycatch, and compliance with the laws of the United States by foreign fishing vessels that fish under Pacific Insular Area fishing agreements;

(ii) conduct of marine and fisheries research, including development of systems for information collection, analysis, evaluation, and reporting;

(iii) conservation, education, and enforcement activities related to marine and coastal management, such as living marine resource assessments, habitat monitoring and coastal studies;

(iv) grants to the University of Hawaii for technical assistance projects by the Pacific Island Network, such as education and training in the development and implementation of sustainable marine resources development projects, scientific research, and conservation strategies; and

(v) western Pacific community-based demonstration projects under section 112(b) of the Sustainable Fisheries Act and other coastal improvement projects to foster and promote the management, conservation, and economic enhancement of the Pacific Insular Areas.

(B) In the case of American Samoa, Guam, and the Northern Mariana Islands, the appropriate Governor, with the concurrence of the Western Pacific Council, shall develop the marine conservation plan described in subparagraph (A) and submit such plan to the Secretary for approval. In the case of other Pacific Insular Areas, the Western Pacific Council shall develop and submit the marine conservation plan described in subparagraph (A) to the Secretary for approval.

(C) If a Governor or the Western Pacific Council intends to request that the Secretary of State renew a Pacific Insular Area fishery agreement, a subsequent 3-year plan shall be submitted to the Secretary for approval by the end of the second year of the existing 3-year plan.

### **(5) Reciprocal conditions**

Except as expressly provided otherwise in this subsection, a Pacific Insular Area fishing agreement may include terms similar to the terms applicable to United States fishing vessels for access to similar fisheries in waters subject to the fisheries jurisdiction of another nation.

### **(6) Use of payments by American Samoa, Guam, Northern Mariana Islands**

Any payments received by the Secretary under a Pacific Insular Area fishery agreement for American Samoa, Guam, or the Northern Mariana Islands shall be deposited into the United States Treasury and then covered over to the Treasury of the Pacific Insular Area for which those funds were collected. Amounts deposited in the Treasury of a Pacific Insular Area shall be available, without appropriation or fiscal year limitation, to the Governor of the Pacific Insular Area—

(A) to carry out the purposes of this subsection;

(B) to compensate (i) the Western Pacific Council for mutually agreed upon administrative costs incurred relating to any Pacific Insular Area fishery agreement for such Pacific Insular Area, and (ii) the Secretary of State for mutually agreed upon travel expenses for no more than 2 Federal representatives incurred as a direct result of complying with paragraph (1)(A); and

(C) to implement a marine conservation plan developed and approved under paragraph (4).

### **(7) Western Pacific Sustainable Fisheries Fund**

There is established in the United States Treasury a Western Pacific Sustainable Fisheries Fund into which any payments received by the Secretary under a Pacific Insular Area fishery agreement and any funds or contributions received in support of conservation and management objectives under a marine conservation plan for any Pacific Insular Area other than American Samoa, Guam, or the Northern Mariana Islands shall be deposited. The Western Pacific Sustainable Fisheries Fund shall be made available, without appropriation or fiscal year limitation, to the Secretary, who shall provide such funds only to—

- (A) the Western Pacific Council for the purpose of carrying out the provisions of this subsection, including implementation of a marine conservation plan approved under paragraph (4);
- (B) the Secretary of State for mutually agreed upon travel expenses for no more than 2 Federal representatives incurred as a direct result of complying with paragraph (1)(B); and
- (C) the Western Pacific Council to meet conservation and management objectives in the State of Hawaii if monies remain in the Western Pacific Sustainable Fisheries Fund after the funding requirements of subparagraphs (A) and (B) have been satisfied.

Amounts deposited in such fund shall not diminish funding received by the Western Pacific Council for the purpose of carrying out other responsibilities under this chapter.

#### **(8) Use of fines and penalties**

In the case of violations occurring within the exclusive economic zone off American Samoa, Guam, or the Northern Mariana Islands, amounts received by the Secretary which are attributable to fines or penalties imposed under this chapter, including such sums collected from the forfeiture and disposition or sale of property seized subject to its authority, after payment of direct costs of the enforcement action to all entities involved in such action, shall be deposited into the Treasury of the Pacific Insular Area adjacent to the exclusive economic zone in which the violation occurred, to be used for fisheries enforcement and for implementation of a marine conservation plan under paragraph (4). In the case of violations by foreign vessels occurring within the exclusive economic zones off Midway Atoll, Johnston Atoll, Kingman Reef, Palmyra Atoll, Jarvis, Howland, Baker, and Wake Islands, amounts received by the Secretary attributable to fines and penalties imposed under this chapter, shall be deposited into the Western Pacific Sustainable Fisheries Fund established under paragraph (7) of this subsection.

(Pub. L. 94–265, title II, §204, Apr. 13, 1976, 90 Stat. 342; Pub. L. 95–354, §4(5)–(8), Aug. 28, 1978, 92 Stat. 520, 521; Pub. L. 96–470, title I, §111(b), title II, §208, Oct. 19, 1980, 94 Stat. 2239, 2245; Pub. L. 96–561, title II, §232, Dec. 22, 1980, 94 Stat. 3298; Pub. L. 97–453, §3, Jan. 12, 1983, 96 Stat. 2483; Pub. L. 99–272, title VI, §6021, Apr. 7, 1986, 100 Stat. 123; Pub. L. 99–659, title I, §§101(c)(2), 102, 103(b), Nov. 14, 1986, 100 Stat. 3707, 3709; Pub. L. 101–627, title I, §§106, 120(b), Nov. 28, 1990, 104 Stat. 4440, 4459; Pub. L. 102–251, title III, §301(f), Mar. 9, 1992, 106 Stat. 64; Pub. L. 104–297, title I, §105(d), Oct. 11, 1996, 110 Stat. 3564; Pub. L. 109–479, §6, title IV, §404(b), Jan. 12, 2007, 120 Stat. 3579, 3632.)

#### **AMENDMENT OF SUBSECTION (A)**

*Pub. L. 102–251, title III, §301(f), 308, Mar. 9, 1992, 106 Stat. 64, 66, provided that, effective on the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States, with authority to prescribe implementing regulations effective Mar. 9, 1992, but with no such regulation to be effective until the date on which the Agreement enters into force for the United States, subsection (a) is amended by inserting "within the special areas," before "or for anadromous species" and "or areas" after "such zone".*

#### **EDITORIAL NOTES**

#### **REFERENCES IN TEXT**

This chapter, referred to in subsecs. (b)(6)(A), (c), (d)(3)(A), and (e)(2)(A), (C), (7), (8), was in the original "this Act", meaning Pub. L. 94–265, Apr. 13, 1976, 90 Stat. 331, known as the Magnuson-Stevens Fishery Conservation and Management Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

Section 112(b) of the Sustainable Fisheries Act, referred to in subsec. (e)(4)(A)(v), is section 112(b) of Pub. L. 104–297, which amended section 1856 of this title. The reference probably should have been to section 111(b) of Pub. L. 104–297 which relates to western Pacific demonstration projects and is set out as a note under section 1855 of this title.

#### **AMENDMENTS**

**2007**—Subsec. (e)(4)(A)(i). Pub. L. 109–479, §404(b), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "establishment of Pacific Insular Area observer programs, approved by the Secretary in consultation with the Western Pacific Council, that provide observer coverage for foreign fishing under Pacific Insular Area fishery agreements that is at least equal in effectiveness to the program established by the Secretary under section 1821(h) of this title;".



Subsec. (e)(7). Pub. L. 109–479, §6(1), inserted "and any funds or contributions received in support of conservation and management objectives under a marine conservation plan" after "agreement" in introductory provisions.

Subsec. (e)(8). Pub. L. 109–479, §6(2), inserted at end "In the case of violations by foreign vessels occurring within the exclusive economic zones off Midway Atoll, Johnston Atoll, Kingman Reef, Palmyra Atoll, Jarvis, Howland, Baker, and Wake Islands, amounts received by the Secretary attributable to fines and penalties imposed under this chapter, shall be deposited into the Western Pacific Sustainable Fisheries Fund established under paragraph (7) of this subsection."

**1996**—Subsec. (b)(7). Pub. L. 104–297, §105(d)(1), inserted "or subsection (d)" after "under paragraph (6)" in introductory provisions.

Subsec. (b)(7)(A). Pub. L. 104–297, §105(d)(2), substituted "any applicable Federal or State fishing regulations" for "the regulations promulgated to implement any such plan".

Subsec. (b)(7)(D). Pub. L. 104–297, §105(d)(3), inserted "or subsection (d)" after "under paragraph (6) (B)".

Subsecs. (d), (e). Pub. L. 104–297, §105(d)(4), added subsecs. (d) and (e).

**1990**—Subsec. (b)(4)(C). Pub. L. 101–627, §120(b), substituted "Council" for "council".

Subsec. (b)(10). Pub. L. 101–627, §106(a), amended par. (10) generally. Prior to amendment, par. (10) consisted of subpars. (A) to (F) relating to schedule of fees to be paid for permits for foreign fishing vessels, ratios for determining minimum fees, review and notice to Congress of performance by nations receiving allocations, factors included and excluded in cost of carrying out this chapter, use of amounts collected in fees, and deposit into general fund of United States Treasury of a determined amount.

Subsec. (b)(12). Pub. L. 101–627, §106(b), struck out par. (12) which related to sanctions for violation of section 1857 of this title or for failure to pay civil penalty under section 1858 of this title or criminal fine under section 1859 of this title. See section 1858(g) of this title.

**1986**—Subsec. (a). Pub. L. 99–659, §101(c)(2), substituted "exclusive economic zone" for "fishery conservation zone".

Subsec. (b)(1). Pub. L. 99–659, §102(1), inserted provision that no permit issued under this section may be valid for longer than a year, with section 558(c) of title 5 inapplicable to the renewal of any such permit.

Subsec. (b)(3)(G). Pub. L. 99–659, §103(b), added subpar. (G).

Subsec. (b)(4)(C). Pub. L. 99–659, §102(2), struck out ", upon its request" before period at end.

Subsec. (b)(6)(A). Pub. L. 99–659, §102(3), inserted ", or he may disapprove all or any portion of the application".

Subsec. (b)(10). Pub. L. 99–272 amended par. (10) generally. Prior to amendment, par. (10) read as follows: "Fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit is issued pursuant to this subsection. The Secretary, in consultation with the Secretary of State, shall establish a schedule of such fees which shall apply nondiscriminatorily to each foreign nation. The fees imposed under this paragraph shall be at least in an amount sufficient to return to the United States an amount which bears to the total cost of carrying out the provisions of this chapter (including, but not limited to, fishery conservation and management, fisheries research, administration, and enforcement, but excluding costs for observers covered by surcharges under section 1821(i)(4) of this title) during each fiscal year the same ratio as the aggregate quantity of fish harvested by foreign fishing vessels within the fishery conservation zone during the preceding year bears to the aggregate quantity of fish harvested by both foreign and domestic fishing vessels within such zone and the territorial waters of the United States during such preceding year. The amount collected by the Secretary under this paragraph shall be transferred to the fisheries loan fund established under section 742c of this title for so long as such fund exists and used of the purpose of making loans therefrom, but only to the extent and in amounts provided for in advance in appropriation Acts."

Subsec. (b)(10)(B), (C). Pub. L. 99–659, §101(c)(2), substituted "exclusive economic zone" for "fishery conservation zone".

Subsec. (b)(12). Pub. L. 99–659, §102(4), amended par. (12) generally. Prior to amendment, par. (12) read as follows: "If any foreign fishing vessel for which a permit has been issued pursuant to this subsection has been used in the commission of any act prohibited by section 1857 of this title the Secretary may, or if any civil penalty imposed under section 1858 of this title or any criminal fine imposed under section 1859 of this title has not been paid and is overdue the Secretary shall—

"(A) revoke such permit, with or without prejudice to the right of the foreign nation involved to obtain a permit for such vessel in any subsequent year;

"(B) suspend such permit for the period of time deemed appropriate; or

"(C) impose additional conditions and restrictions on the approved application of the foreign nation involved and on any permit issued under such application.

Any permit which is suspended under this paragraph for nonpayment of a civil penalty shall be reinstated by the Secretary upon the payment of such civil penalty together with interest thereon at the prevailing

rate."

**1983**—Subsec. (b)(3)(B). Pub. L. 97–453, §3(1), inserted "hold" before "capacity".

Subsec. (b)(4). Pub. L. 97–453, §3(2), struck out "and shall be set forth under the name of each Council to which it will be transmitted for comment" after "in paragraph (3)".

Subsec. (b)(4)(B). Pub. L. 97–453, §3(3), struck out "to each appropriate Council and" after "application".

Subsec. (b)(4)(C). Pub. L. 97–453, §3(3), substituted "a copy or a summary of the application to the appropriate council, upon its request" for "a monthly summary of foreign fishing applications including a report on approved applications as described in paragraphs (6) and (7) to the Committee on Merchant Marine and Fisheries of the House of Representatives and to the Committees on Commerce and Foreign Relations of the Senate".

Subsec. (b)(5). Pub. L. 97–453, §3(4), substituted "After receiving a copy or summary of an application under paragraph (4)(C), the Council may" for "After receipt of an application transmitted under paragraph (4)(B), each appropriate Council shall".

**1980**—Subsec. (b)(4)(C). Pub. L. 96–470, §208, substituted "a monthly summary of foreign fishing applications including a report on approval applications as described in paragraph (6) and (7)" for "a copy of such material".

Subsec. (b)(8)(D). Pub. L. 96–470, §111(b), struck out subpar. (D) which required the Secretary to promptly transmit a copy of each application to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committees on Commerce and Foreign Relations of the Senate.

Subsec. (b)(10). Pub. L. 96–561, §232(b), substituted provision directing that fees imposed under this paragraph be at least in an amount sufficient to return to the United States an amount which bears to the total cost of carrying out the provisions of this chapter, including, but not limited to, fishery conservation and management, fisheries research, administration, and enforcement, but excluding costs for observers covered by surcharges under section 1821(i)(4) of this title, during each fiscal year, the same ratio as the aggregate quantity of fish harvested by foreign fishing vessels within the fishery conservation zone during the preceding year bears to the aggregate quantity of fish harvested by both foreign and domestic fishing vessels within such zone and the territorial waters of the United States during such preceding year and that the fees collected for permits issued after 1981 be transferred to the fisheries loan fund for provision directing that fees be formulated so as to ensure that receipts resulting from payments for fees issued for 1981 are not less than an amount equal to 7 percent of the ex vessel value of the total harvest by foreign fishing vessels in the fishery conservation zone during 1979 and that the fees collected for permits issued for 1981 be transferred to the fisheries loan fund.

Pub. L. 96–561, §232(a), substituted provision directing that fees be formulated so as to ensure that receipts resulting from payments for fees issued for 1981 are not less than an amount equal to 7 percent of the ex vessel value of the total harvest by foreign fishing vessels in the fishery conservation zone during 1979 and that the fees collected for permits issued for 1981 be transferred to the fisheries loan fund for provision permitting the Secretary, in determining the level of fees, to take into account the cost of carrying out the provisions of this chapter with respect to foreign fishing, including, but not limited to, the cost of fishery conservation and management, fisheries research, administration, and enforcement.

**1978**—Subsec. (b)(3)(D) to (F). Pub. L. 95–354, §4(5), in subpar. (D) substituted provisions relating to estimation of amount of tonnage which will be caught, taken, or harvested, for provisions relating to the amount of fish or tonnage of catch contemplated for each vessel, added subpar. (E), and redesignated former subpar. (E) as (F).

Subsec. (b)(4). Pub. L. 95–354, §4(6), substituted provisions relating to publication of the notice of receipt of the application in the Federal Register, for provisions relating to publication of the application in the Federal Register.

Subsec. (b)(6). Pub. L. 95–354, §4(7), redesignated existing provisions as subpar. (A) inserted reference to subpar. (B), and added subpar. (B).

Subsec. (b)(7)(D) to (F). Pub. L. 95–354, §4(8), added subpars. (D) and (E) and redesignated former subpar. (D) as (F).

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–251 effective on date on which Agreement between United States and Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for United States, with authority to prescribe implementing regulations effective Mar. 9, 1992, but with no such regulation to be effective until date on which Agreement enters into force for United States, see section 308 of Pub. L. 102–251, set out as a note under section 773 of this title.

## EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–561, [title II, §232\(a\)](#), [Dec. 22, 1980](#), 94 Stat. 3298, provided that the amendment made by that section is effective with respect to permits issued under subsec. (b) of this section for 1981.

Pub. L. 96–561, [title II, §232\(b\)](#), [Dec. 22, 1980](#), 94 Stat. 3298, provided that the amendment made by that section is effective with respect to permits issued under subsec. (b) of this section after 1981.

## TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

## §1825. Import prohibitions

### (a) Determinations by Secretary of State

If the Secretary of State determines that—

(1) he has been unable, within a reasonable period of time, to conclude with any foreign nation an international fishery agreement allowing fishing vessels of the United States equitable access to fisheries over which that nation asserts exclusive fishery management authority, including fisheries for tuna species, as recognized by the United States, in accordance with fishing activities of such vessels, if any, and under terms not more restrictive than those established under sections 1821(c) and (d) and 1824(b)(7) and (10) of this title, because such nation has (A) refused to commence negotiations, or (B) failed to negotiate in good faith;

(2) any foreign nation is not allowing fishing vessels of the United States to engage in fishing for tuna species in accordance with an applicable international fishery agreement, whether or not such nation is a party thereto;

(3) any foreign nation is not complying with its obligations under any existing international fishery agreement concerning fishing by fishing vessels of the United States in any fishery over which that nation asserts exclusive fishery management authority; or

(4) any fishing vessel of the United States, while fishing in waters beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States, is seized by any foreign nation—

(A) in violation of an applicable international fishery agreement;

(B) without authorization under an agreement between the United States and such nation; or

(C) as a consequence of a claim of jurisdiction which is not recognized by the United States;

he shall certify such determination to the Secretary of the Treasury.

### (b) Prohibitions

Upon receipt of any certification from the Secretary of State under subsection (a), the Secretary of the Treasury shall immediately take such action as may be necessary and appropriate to prohibit the importation into the United States—

(1) of all fish and fish products from the fishery involved, if any; and

(2) upon recommendation of the Secretary of State, such other fish or fish products, from any fishery of the foreign nation concerned, which the Secretary of State finds to be appropriate to carry out the purposes of this section.

### (c) Removal of prohibition

If the Secretary of State finds that the reasons for the imposition of any import prohibition under this section no longer prevail, the Secretary of State shall notify the Secretary of the Treasury, who shall promptly remove such import prohibition.

### (d) Definitions

As used in this section—

(1) The term "fish" includes any highly migratory species.

(2) The term "fish products" means any article which is produced from or composed of (in whole or in part) any fish.

(Pub. L. 94–265, [title II, §205](#), [Apr. 13, 1976](#), 90 Stat. 345; Pub. L. 101–627, [title I, §105\(b\)\(1\)](#), [Nov. 28, 1990](#), 104 Stat. 4440.)

## EDITORIAL NOTES

## AMENDMENTS

**1990**—Subsec. (a)(1). Pub. L. 101–627, §105(b)(1)(A), inserted "including fisheries for tuna species," after "authority," and struck out "traditional" after "in accordance with".

Subsec. (a)(2). Pub. L. 101–627, §105(b)(1)(B), substituted "tuna" for "highly migratory".

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–627, [title I, §105\(b\)\(2\)](#), Nov. 28, 1990, 104 Stat. 4440, provided that: "The amendments made by this subsection [amending this section] shall take effect on January 1, 1992."

## §1826. Large-scale driftnet fishing

### (a) Short title

This section incorporates and expands upon provisions of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 and may be cited as the "Driftnet Act Amendments of 1990".

### (b) Findings

The Congress finds that—

(1) the continued widespread use of large-scale driftnets beyond the exclusive economic zone of any nation is a destructive fishing practice that poses a threat to living marine resources of the world's oceans, including but not limited to the North and South Pacific Ocean and the Bering Sea;

(2) the use of large-scale driftnets is expanding into new regions of the world's oceans, including the Atlantic Ocean and Caribbean Sea;

(3) there is a pressing need for detailed and reliable information on the number of seabirds, sea turtles, nontarget fish, and marine mammals that become entangled and die in actively fished large-scale driftnets and in large-scale driftnets that are lost, abandoned, or discarded;

(4) increased efforts, including reliable observer data and enforcement mechanisms, are needed to monitor, assess, control, and reduce the adverse impact of large-scale driftnet fishing on living marine resources;

(5) the nations of the world have agreed in the United Nations, through General Assembly Resolution Numbered 44–225, approved December 22, 1989, by the General Assembly, that a moratorium should be imposed by June 30, 1992, on the use of large-scale driftnets beyond the exclusive economic zone of any nation;

(6) the nations of the South Pacific have agreed to a moratorium on the use of large-scale driftnets in the South Pacific through the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, which was agreed to in Wellington, New Zealand, on November 29, 1989;

(7) increasing population pressures and new knowledge of the importance of living marine resources to the health of the global ecosystem demand that greater responsibility be exercised by persons fishing or developing new fisheries beyond the exclusive economic zone of any nation; and

(8) within the exclusive economic zone, large-scale driftnet fishing that deploys nets with large mesh sizes causes significant entanglement and mortality of living marine resources, including myriad protected species, despite limitations on the lengths of such nets.

### (c) Policy

It is declared to be the policy of the Congress in this section that the United States should—

(1) implement the moratorium called for by the United Nations General Assembly in Resolution Numbered 44–225;

(2) support the Tarawa Declaration and the Wellington Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific;

(3) secure a permanent ban on the use of destructive fishing practices, and in particular large-scale driftnets, by persons or vessels fishing beyond the exclusive economic zone of any nation; and

(4) prioritize the phase out of large-scale driftnet fishing in the exclusive economic zone and promote the development and adoption of alternative fishing methods and gear types that minimize the incidental catch of living marine resources.

### (d) International agreements

The Secretary, through the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall seek to secure international agreements to implement immediately the findings, policy, and provisions of this section, and in particular an international ban on large-scale driftnet fishing. The Secretary, through the Secretary of State, shall include, in any agreement which addresses the taking of living marine resources of the United States, provisions to ensure that—

(1) each large-scale driftnet fishing vessel of a foreign nation that is party to the agreement, including vessels that may operate independently to develop new fishing areas, which operate beyond the exclusive economic zone of any nation, is included in such agreement;

(2) each large-scale driftnet fishing vessel of a foreign nation that is party to the agreement, which operates beyond the exclusive economic zone of any nation, is equipped with satellite transmitters which provide real-time position information accessible to the United States;

(3) statistically reliable monitoring by the United States is carried out, through the use of on-board observers or through dedicated platforms provided by foreign nations that are parties to the agreement, of all target and nontarget fish species, marine mammals, sea turtles, and sea birds entangled or killed by large-scale driftnets used by fishing vessels of foreign nations that are parties to the agreement;

(4) officials of the United States have the right to board and inspect for violations of the agreement any large-scale driftnet fishing vessels operating under the flag of a foreign nation that is party to the agreement at any time while such vessel is operating in designated areas beyond the exclusive economic zone of any nation;

(5) all catch landed or transshipped at sea by large-scale driftnet fishing vessels of a foreign nation that is a party to the agreement, and which are operated beyond the exclusive economic zone of any nation, is reliably monitored and documented;

(6) time and area restrictions are imposed on the use of large-scale driftnets in order to prevent interception of anadromous species;

(7) all large-scale driftnets used are constructed, insofar as feasible, with biodegradable materials which break into segments that do not represent a threat to living marine resources;

(8) all large-scale driftnets are marked at appropriate intervals in a manner that conclusively identifies the vessel and flag nation responsible for each such driftnet;

(9) the taking of nontarget fish species, marine mammals, sea turtles, seabirds, and endangered species or other species protected by international agreements to which the United States is a party is minimized and does not pose a threat to existing fisheries or the long-term health of living marine resources; and

(10) definitive steps are agreed upon to ensure that parties to the agreement comply with the spirit of other international agreements and resolutions concerning the use of large-scale driftnets beyond the exclusive economic zone of any nation.

#### **(e) Effect on sovereign rights**

This section shall not serve or be construed to expand or diminish the sovereign rights of the United States, as stated by Presidential Proclamation Numbered 5030, dated March 10, 1983, and reflected in this chapter or other existing law.

#### **(f) "Living marine resources" defined**

As used in this section, the term "living marine resources" includes fish, marine mammals, sea turtles, and seabirds and other waterfowl.

#### **(i) <sup>1</sup> Fishing gear transition program**

##### **(1) In general**

During the 5-year period beginning on December 29, 2022, the Secretary shall conduct a transition program to facilitate the phase-out of large-scale driftnet fishing and adoption of alternative fishing practices that minimize the incidental catch of living marine resources, and shall award grants to eligible permit holders who participate in the program.

##### **(2) Permissible uses**

Any permit holder receiving a grant under paragraph (1) may use such funds only for the purpose of covering—

(A) any fee originally associated with a permit authorizing participation in a large-scale driftnet fishery, if such permit is surrendered for permanent revocation, and such permit holder relinquishes any claim associated with the permit;

(B) a forfeiture of fishing gear associated with a permit described in subparagraph (A); or

(C) the purchase of alternative gear with minimal incidental catch of living marine resources, if the fishery participant is authorized to continue fishing using such alternative gears.

##### **(3) Certification**

The Secretary shall certify that, with respect to each participant in the program under this subsection, any permit authorizing participation in a large-scale driftnet fishery has been permanently revoked and that no new permits will be issued to authorize such fishing.

(Pub. L. 94–265, title II, §206, as added Pub. L. 95–6, §3(1), Feb. 21, 1977, 91 Stat. 15; amended Pub. L. 99–659, title I, §101(c)(2), Nov. 14, 1986, 100 Stat. 3707; Pub. L. 101–627, title I, §107(a), Nov. 28, 1990, 104 Stat. 4441; Pub. L. 104–297, title I, §105(f), Oct. 11, 1996, 110 Stat. 3569; Pub. L. 117–328, div. S, title I, §§103, 104, title II, §205(b)(1)(B), Dec. 29, 2022, 136 Stat. 5259, 5270.)

## **EDITORIAL NOTES**

## **REFERENCES IN TEXT**

The Driftnet Impact Monitoring, Assessment, and Control Act of 1987, referred to in subsec. (a), is title IV of Pub. L. 100–220, which is set out as a note under section 1822 of this title.

Presidential Proclamation Numbered 5030, referred to in subsec. (e), is set out under section 1453 of this title.

This chapter, referred to in subsec. (e), was in the original "this Act", meaning Pub. L. 94–265, Apr. 13, 1976, 90 Stat. 331, known as the Magnuson-Stevens Fishery Conservation and Management Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

## CODIFICATION

Former subsecs. (g) and (h) were redesignated (e) and (f), respectively, by Pub. L. 117–328, §205(b)(1)(B). See 2022 Amendment note below.

## AMENDMENTS

**2022**—Subsec. (b)(8). Pub. L. 117–328, §103(a), added par. (8).

Subsec. (c)(4). Pub. L. 117–328, §103(b), added par. (4).

Subsecs. (e) to (h). Pub. L. 117–328, §205(b)(1)(B), redesignated subsecs. (g) and (h) as (e) and (f), respectively, and struck out former subsecs. (e) and (f), which related, respectively, to reports and certification.

Subsec. (i). Pub. L. 117–328, §104, added subsec. (i).

**1996**—Subsec. (e). Pub. L. 104–297, §105(f)(1), redesignated pars. (5) and (6) as (3) and (4), respectively, and struck out former pars. (3) and (4) which read as follows:

"(3) identifying and evaluating the effectiveness of unilateral measures and multilateral measures, including sanctions, that are available to encourage nations to agree to and comply with this section, and recommendations for legislation to authorize any additional measures that are needed if those are considered ineffective;

"(4) identifying, evaluating, and making any recommendations considered necessary to improve the effectiveness of the law, policy, and procedures governing enforcement of the exclusive management authority of the United States over anadromous species against fishing vessels engaged in fishing beyond the exclusive economic zone of any nation;"

Subsec. (f). Pub. L. 104–297, §105(f)(2), substituted "subsection (e)(4)" for "subsection (e)(6)".

**1990**—Pub. L. 101–627 amended section generally, substituting provisions relating to large-scale driftnet fishing for provisions relating to transitional provisions.

**1986**—Subsec. (b). Pub. L. 99–659 substituted "exclusive economic zone" for "fishery conservation zone".

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

### ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. Committee on Merchant Marine and Fisheries of House of Representatives treated as referring to Committee on Resources of House of Representatives in case of provisions relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography by section 1(b)(3) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Resources of House of Representatives changed to Committee on Natural Resources of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

<sup>1</sup> *So in original. See Codification note below.*

## §1826a. Denial of port privileges and sanctions for high seas large-scale driftnet fishing

### (a) Denial of port privileges



**(1) Publication of list**

Not later than 30 days after November 2, 1992, and periodically thereafter, the Secretary of Commerce, in consultation with the Secretary of State, shall publish a list of nations whose nationals or vessels conduct large-scale driftnet fishing beyond the exclusive economic zone of any nation.

**(2) Denial of port privileges**

The Secretary of Homeland Security shall, in accordance with international law—

(A) withhold or revoke the clearance required by section 60105 of title 46 for any large-scale driftnet fishing vessel of a nation that receives a negative certification under section 1826j(d) or 1826k(c) of this title, or fishing vessels of a nation that has been listed pursuant to section 1826j(b) of this title or section 1826k(a) of this title in 2 or more consecutive reports for the same type of fisheries activity, as described under section 1826h of this title, until a positive certification has been received;

(B) withhold or revoke the clearance required by section 60105 of title 46 for fishing vessels of a nation that has been listed pursuant to section 1826j(a) or 1826k(a) of this title in 2 or more consecutive reports as described under section 1826h of this title; and

(C) deny entry of that vessel to any place in the United States and to the navigable waters of the United States, except for the purposes of inspecting such vessel, conducting an investigation, or taking other appropriate enforcement action.

**(3) Notification of nation**

Before the publication of a list of nations under paragraph (1), the Secretary of State shall notify each nation included on that list regarding—

(A) the effect of that publication on port privileges of vessels of that nation under paragraph (1); and

(B) any sanctions or requirements, under this Act or any other law, that may be imposed on that nation if nationals or vessels of that nation continue to conduct large-scale driftnet fishing beyond the exclusive economic zone of any nation after December 31, 1992.

**(b) Sanctions****(1) Identifications****(A) Initial identifications**

Not later than January 10, 1993, the Secretary of Commerce shall—

(i) identify each nation whose nationals or vessels are conducting large-scale driftnet fishing beyond the exclusive economic zone of any nation; and

(ii) notify the President and that nation of the identification under clause (i).

**(B) Additional identifications**

At any time after January 10, 1993, whenever the Secretary of Commerce has reason to believe that the nationals or vessels of any nation are conducting large-scale driftnet fishing beyond the exclusive economic zone of any nation, the Secretary of Commerce shall—

(i) identify that nation; and

(ii) notify the President and that nation of the identification under clause (i).

**(2) Consultations**

Not later than 30 days after a nation is identified under paragraph (1)(B), the President shall enter into consultations with the government of that nation for the purpose of obtaining an agreement that will effect the immediate termination of large-scale driftnet fishing by the nationals or vessels of that nation beyond the exclusive economic zone of any nation.

**(3) Prohibition on imports of fish and fish products and sport fishing equipment****(A) Prohibition**

The President—

(i) upon receipt of notification of the identification of a nation under paragraph (1)(A) or a negative certification under section 1826j(d) of this title or section 1826k(c) of this title; or

(ii) if the consultations with the government of a nation under paragraph (2) are not satisfactorily concluded within ninety days, shall direct the Secretary of the Treasury to prohibit the importation into the United States of fish and fish products and sport fishing equipment (as that term is defined in section 4162 of title 26) from that nation.

**(B) Implementation of prohibition**

With respect to an import prohibition directed under subparagraph (A), the Secretary of the Treasury shall implement such prohibition not later than the date that is forty-five days after the date on which the Secretary has received the direction from the President.

**(C) Public notice of prohibition**

Before the effective date of any import prohibition under this paragraph, the Secretary of the Treasury shall provide public notice of the impending prohibition.

**(4) Additional economic sanctions****(A) Determination of effectiveness of sanctions**

Not later than six months after the date the Secretary of Commerce identifies a nation under paragraph (1) or issues a negative certification under section 1826j(d) of this title or section 1826k(c) of this title, the Secretary shall determine whether—

- (i) any prohibition established under paragraph (3) is insufficient to cause that nation to terminate large-scale driftnet fishing conducted by its nationals and vessels beyond the exclusive economic zone of any nation, or to address the offending activities for which a nation received a negative certification under section 1826j(d) or 1826k(c) of this title; or
- (ii) that nation has retaliated against the United States as a result of that prohibition.

**(B) Certification**

The Secretary of Commerce shall certify to the President each affirmative determination under subparagraph (A) with respect to a nation.

**(C) Effect of certification**

Certification by the Secretary of Commerce under subparagraph (B) is deemed to be a certification under section 1978(a) of title 22.

(Pub. L. 102–582, title I, §101, Nov. 2, 1992, 106 Stat. 4901; Pub. L. 109–479, title IV, §403(b)(1), Jan. 12, 2007, 120 Stat. 3632; Pub. L. 114–81, title I, §102(a), Nov. 5, 2015, 129 Stat. 656; Pub. L. 117–263, div. K, title CXIII, §11336, Dec. 23, 2022, 136 Stat. 4101.)

**EDITORIAL NOTES****REFERENCES IN TEXT**

This Act, referred to in subsec. (a)(3)(B), is Pub. L. 102–582, Nov. 2, 1992, 106 Stat. 4900, known as the High Seas Driftnet Fisheries Enforcement Act, which enacted sections 1826a to 1826c of this title and section 1707a of the former Appendix to Title 46, Shipping, amended sections 1362, 1371, 1852, and 1862 of this title, section 1978 of Title 22, Foreign Relations and Intercourse, and section 2110 of Title 46, repealed section 1111c of the former Appendix to Title 46, and enacted provisions set out as notes under this section and sections 1801, 1823, and 1861 of this title and section 2110 of Title 46. For complete classification of this Act to the Code, see Short Title of 1992 Amendments note set out under section 1801 of this title and Tables.

**CODIFICATION**

Section was enacted as part of the High Seas Driftnet Fisheries Enforcement Act, and not as part of the Magnuson-Stevens Fishery Conservation and Management Act which comprises this chapter.

**AMENDMENTS**

**2022**—Subsec. (a)(2). Pub. L. 117–263 amended par. (2) generally. Prior to amendment, text read as follows: "The Secretary of the Treasury shall, in accordance with international law—

"(A) withhold or revoke the clearance required by section 60105 of title 46 for any large-scale driftnet fishing vessel that is documented under the laws of the United States or of a nation included on a list published under paragraph (1) or, as appropriate, for fishing vessels of a nation that receives a negative certification under section 1826j(d) of this title or section 1826k(c) of this title; and

"(B) deny entry of that vessel to any place in the United States and to the navigable waters of the United States, except for the purposes of inspecting such vessel, conducting an investigation, or taking other appropriate enforcement action."

**2015**—Subsec. (a)(2). Pub. L. 114–81, §102(a)(1), struck out "recognized principles of" after "in accordance with" in introductory provisions.

Subsec. (a)(2)(A). Pub. L. 114–81, §102(a)(2), inserted "or, as appropriate, for fishing vessels of a nation that receives a negative certification under section 1826j(d) of this title or section 1826k(c) of this title" after "paragraph (1)".

Subsec. (a)(2)(B). Pub. L. 114–81, §102(a)(3), inserted before period at end ", except for the purposes of inspecting such vessel, conducting an investigation, or taking other appropriate enforcement action".

Subsec. (b)(1)(A)(i). Pub. L. 114–81, §102(a)(4), struck out "or illegal, unreported, or unregulated fishing" after "driftnet fishing".

Subsec. (b)(1)(B), (2). Pub. L. 114–81, §102(a)(5), struck out "or illegal, unreported, or unregulated fishing" after "driftnet fishing".

Subsec. (b)(3)(A)(i). Pub. L. 114–81, §102(a)(6), inserted "or a negative certification under section 1826j(d) of this title or section 1826k(c) of this title" after "paragraph (1)(A)".

Subsec. (b)(4)(A). Pub. L. 114–81, §102(a)(7), inserted "or issues a negative certification under section 1826j(d) of this title or section 1826k(c) of this title" after "paragraph (1)" in introductory provisions.

Subsec. (b)(4)(A)(i). Pub. L. 114–81, §102(a)(8), (9), struck out "or illegal, unreported, or unregulated fishing" after "driftnet fishing" and inserted ", or to address the offending activities for which a nation received a negative certification under section 1826j(d) or 1826k(c) of this title" after "beyond the exclusive economic zone of any nation".

**2007**—Subsec. (b)(1)(A)(i), (B), (2), (4)(A)(i). Pub. L. 109–479 inserted "or illegal, unreported, or unregulated fishing" after "driftnet fishing".

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### REGULATIONS

Pub. L. 117–263, [div. K, title CXIII, §11341, Dec. 23, 2022](#), 136 Stat. 4105, provided that: "Not later than 1 year after the date of enactment of this Act [Dec. 23, 2022], the Secretary shall promulgate such regulations as may be necessary to carry out this subtitle [subtitle E (§§11329–11341) of title CXIII of div. K of Pub. L. 117–263, see Tables for classification] and the amendments made by this subtitle."

[For definition of "Secretary" as used in section 11341 of Pub. L. 117–263, set out above, see section 11329 of Pub. L. 117–263, set out as a note under section 1885a of this title.]

### HIGH SEAS DRIFTNET FISHERIES ENFORCEMENT; CONGRESSIONAL STATEMENT OF FINDINGS AND POLICY

Pub. L. 102–582, [§2, Nov. 2, 1992](#), 106 Stat. 4900, as amended by Pub. L. 104–208, [div. A, title I, §101\(a\) \[title II, §211\(b\)\], Sept. 30, 1996](#), 110 Stat. 3009, [3009-41](#), provided that:

"(a) FINDINGS.—Congress makes the following findings:

"(1) Large-scale driftnet fishing on the high seas is highly destructive to the living marine resources and ocean ecosystems of the world's oceans, including anadromous fish and other living marine resources of the United States.

"(2) The cumulative effects of large-scale driftnet fishing pose a significant threat to the marine ecosystem, and slow-reproducing species like marine mammals, sharks, and seabirds may require many years to recover.

"(3) Members of the international community have reviewed the best available scientific data on the impacts of large-scale pelagic driftnet fishing, and have failed to conclude that this practice has no significant adverse impacts which threaten the conservation and sustainable management of living marine resources.

"(4) The United Nations, via General Assembly Resolutions numbered 44–225, 45–197, and most recently 46–215 (adopted on December 20, 1991), has called for a worldwide moratorium on all high seas driftnet fishing by December 31, 1992, in all the world's oceans, including enclosed seas and semi-enclosed seas.

"(5) The United Nations has commended the unilateral, regional, and international efforts undertaken by members of the international community and international organizations to implement and support the objectives of the General Assembly resolutions.

"(6) Operative paragraph (4) of United Nations General Assembly Resolution numbered 46–215 specifically 'encourages all members of the international community to take measures individually and collectively to prevent large-scale pelagic driftnet fishing operations on the high seas of the world's oceans and seas'.

"(7) The United States, in section 307(1)(M) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1857(1)(M)), has specifically prohibited the practice of large-scale driftnet fishing by United States nationals and vessels both within the exclusive economic zone of the United States and beyond the exclusive economic zone of any nation.

"(8) The Senate, through Senate Resolution 396 of the One Hundredth Congress (approved on March 18, 1988), has called for a moratorium on fishing in the Central Bering Sea and the United States has taken concrete steps to implement such moratorium through international negotiations.

"(9) Despite the continued evidence of a decline in the fishery resources of the Bering Sea and the multiyear cooperative negotiations undertaken by the United States, the Russian Federation, Japan, and other concerned fishing nations, some nations refuse to agree to measures to reduce or eliminate unregulated fishing practices in the waters of the Bering Sea beyond the exclusive economic zones of the United States and the Russian Federation.

"(10) In order to ensure that the global moratorium on large-scale driftnet fishing called for in United Nations General Assembly Resolution numbered 46–215 takes effect by December 31, 1992,

and that unregulated fishing practices in the waters of the Central Bering Sea are reduced or eliminated, the United States should take the actions described in this Act [see Short Title of 1992 Amendments note set out under section 1801 of this title] and encourage other nations to take similar action.

"(b) **POLICY.**—It is the stated policy of the United States to—

"(1) implement United Nations General Assembly Resolution numbered 46–215, approved unanimously on December 20, 1991, which calls for an immediate cessation to further expansion of large-scale driftnet fishing, a 50 percent reduction in existing large-scale driftnet fishing effort by June 30, 1992, and a global moratorium on the use of large-scale driftnets beyond the exclusive economic zone of any nation by December 31, 1992;

"(2) bring about a moratorium on fishing in the Central Bering Sea, or an international conservation and management agreement to which the United States and the Russian Federation are parties that regulates fishing in the Central Bering Sea; and

"(3) secure a permanent ban on the use of destructive fishing practices, and in particular large-scale driftnets, by persons or vessels fishing beyond the exclusive economic zone of any nation."

## §1826b. Duration of denial of port privileges and sanctions

Any denial of port privileges or sanction under section 1826a of this title with respect to a nation shall remain in effect until such time as the Secretary of Commerce certifies to the President and the Congress that such nation has terminated large-scale driftnet fishing by its nationals and vessels beyond the exclusive economic zone of any nation or effectively addressed the offending activities for which the nation received a negative certification under 1826j(d) <sup>1</sup> or 1826k(c) of this title.

(Pub. L. 102–582, [title I, §102](#), Nov. 2, 1992, 106 Stat. 4903; Pub. L. 109–479, [title IV, §403\(b\)\(2\)](#), Jan. 12, 2007, 120 Stat. 3632; Pub. L. 114–81, [title I, §102\(b\)](#), Nov. 5, 2015, 129 Stat. 656.)

### EDITORIAL NOTES

### CODIFICATION

Section was enacted as part of the High Seas Driftnet Fisheries Enforcement Act, and not as part of the Magnuson-Stevens Fishery Conservation and Management Act which comprises this chapter.

### AMENDMENTS

**2015**—Pub. L. 114–81 struck out "or illegal, unreported, or unregulated fishing" after "driftnet fishing" and inserted "or effectively addressed the offending activities for which the nation received a negative certification under 1826j(d) or 1826j(c) of this title" before period at end.

**2007**—Pub. L. 109–479 inserted "or illegal, unreported, or unregulated fishing" after "driftnet fishing".

<sup>1</sup> *So in original. Probably should be preceded by "section".*

## §1826c. Definitions

In sections 1826a to 1826c of this title, the following definitions apply:

### (1) Fish and fish products

The term "fish and fish products" means any aquatic species (including marine mammals and plants) and all products thereof exported from a nation, whether or not taken by fishing vessels of that nation or packed, processed, or otherwise prepared for export in that nation or within the jurisdiction thereof.

### (2) Large-scale driftnet fishing

#### (A) In general

Except as provided in subparagraph (B), the term "large-scale driftnet fishing" means a method of fishing in which a gillnet composed of a panel or panels of webbing, or a series of such gillnets, with a total length of two and one-half kilometers or more is placed in the water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.

#### (B) Exception

Until January 1, 1994, the term "large-scale driftnet fishing" does not include the use in the northeast Atlantic Ocean of gillnets with a total length not to exceed five kilometers if the use is in accordance with regulations

adopted by the European Community pursuant to the October 28, 1991, decision by the Council of Fisheries Ministers of the Community.

### **(3) Large-scale driftnet fishing vessel**

The term "large-scale driftnet fishing vessel" means any vessel which is—

- (A) used for, equipped to be used for, or of a type which is normally used for large-scale driftnet fishing; or
- (B) used for aiding or assisting one or more vessels at sea in the performance of large-scale driftnet fishing, including preparation, supply, storage, refrigeration, transportation, or processing.

(Pub. L. 102–582, [title I](#), [§104](#), [Nov. 2, 1992](#), 106 Stat. 4903.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

Sections 1826a to 1826c of this title, referred to in text, was in the original "this title", meaning title I of Pub. L. 102–582, [Nov. 2, 1992](#), 106 Stat. 4901, which enacted sections 1826a to 1826c of this title and amended section 1371 of this title. For complete classification of title I to the Code, see Tables.

## **CODIFICATION**

Section was enacted as part of the High Seas Driftnet Fisheries Enforcement Act, and not as part of the Magnuson-Stevens Fishery Conservation and Management Act which comprises this chapter.

### **§1826d. 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.

(Pub. L. 104–43, [title VI](#), [§603](#), [Nov. 3, 1995](#), 109 Stat. 392.)

## **EDITORIAL NOTES**

### **CODIFICATION**

Section was enacted as part of the High Seas Driftnet Fishing Moratorium Protection Act, and also as part of the Fisheries Act of 1995, and not as part of the Magnuson-Stevens Fishery Conservation and Management Act which comprises this chapter.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **CONGRESSIONAL FINDINGS**

Pub. L. 104–43, [title VI](#), [§602](#), [Nov. 3, 1995](#), 109 Stat. 391, provided that: "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, Public Law 100–220) [16 U.S.C. 1822 note], the Driftnet Act Amendments of 1990 (Public Law 101–627) [16 U.S.C. 1826], and the High Seas Driftnet Fisheries Enforcement Act (title I, Public Law 102–582) [see Short Title of 1992 Amendment note set out under section 1801 of this title];

"(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."

## **§1826e. 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.

(Pub. L. 104–43, title VI, §604, Nov. 3, 1995, 109 Stat. 392.)

### **EDITORIAL NOTES**

#### **CODIFICATION**

Section was enacted as part of the High Seas Driftnet Fishing Moratorium Protection Act, and also as part of the Fisheries Act of 1995, and not as part of the Magnuson-Stevens Fishery Conservation and Management Act which comprises this chapter.

## **§1826f. 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 1826d of this title will not be violated if such agreement is signed or provisionally applied.

(Pub. L. 104–43, title VI, §605, Nov. 3, 1995, 109 Stat. 392.)

### **EDITORIAL NOTES**

#### **CODIFICATION**

Section was enacted as part of the High Seas Driftnet Fishing Moratorium Protection Act, and also as part of the Fisheries Act of 1995, and not as part of the Magnuson-Stevens Fishery Conservation and Management Act which comprises this chapter.

## **§1826g. Enforcement**

### **(a) In general**

The Secretary and the Secretary of the department in which the Coast Guard is operating shall enforce this Act, and the Acts to which this section applies, in accordance with this section. Each such Secretary may, by agreement, on a reimbursable basis or otherwise, utilize the personnel services, equipment (including aircraft and vessels), and facilities of any other Federal agency, and of any State agency, in the performance of such duties.

### **(b) Acts to which section applies**

This section applies to—

- (1) the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3631 et seq.);
- (2) the Dolphin Protection Consumer Information Act (16 U.S.C. 1385);
- (3) the Tuna Conventions Act of 1950 (16 U.S.C. 951 et seq.);
- (4) the North Pacific Anadromous Stocks Act of 1992 (16 U.S.C. 5001 et seq.);
- (5) the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 et seq.);
- (6) the Northwest Atlantic Fisheries Convention Act of 1995 (16 U.S.C. 5601 et seq.);
- (7) the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 et seq.);
- (8) the Antigua Convention Implementing Act of 2015; and
- (9) the Ensuring Access to Pacific Fisheries Act.

### **(c) Administration and enforcement**

#### **(1) In general**

The Secretary shall prevent any person from violating this Act, or any Act to which this section applies, in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though sections 308 through 311 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1858 through 1861) were incorporated into and made a part of and applicable to this Act and each such Act.

#### **(2) International cooperation**



The Secretary may, subject to appropriations and in the course of carrying out the Secretary's responsibilities under the Acts to which this section applies, engage in international cooperation to help other nations combat illegal, unreported, and unregulated fishing and achieve sustainable fisheries.

#### **(d) Special rules**

##### **(1) Additional enforcement authority**

In addition to the powers of officers authorized pursuant to subsection (c), any officer who is authorized by the Secretary, or the head of any Federal or State agency that has entered into an agreement with the Secretary under subsection (a), may enforce the provisions of any Act to which this section applies, with the same jurisdiction, powers, and duties as though section 311 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861) were incorporated into and made a part of each such Act.

##### **(2) Disclosure of enforcement information**

###### **(A) In general**

The Secretary, subject to the data confidentiality provisions in section 402 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1881a), may disclose, as necessary and appropriate, information, including information collected under joint authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) and the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 71 et seq.) or the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 et seq.) or other statutes implementing international fishery agreements, to any other Federal or State government agency, the Food and Agriculture Organization of the United Nations, the secretariat or equivalent of an international fishery management organization or arrangement made pursuant to an international fishery agreement, or a foreign government, if—

- (i) such government, organization, or arrangement has policies and procedures to protect such information from unintended or unauthorized disclosure; and
- (ii) such disclosure is necessary—
  - (I) to ensure compliance with any law or regulation enforced or administered by the Secretary;
  - (II) to administer or enforce any international fishery agreement to which the United States is a party;
  - (III) to administer or enforce a binding conservation measure adopted by any international organization or arrangement to which the United States is a party;
  - (IV) to assist in any investigative, judicial, or administrative enforcement proceeding in the United States; or
  - (V) to assist in any law enforcement action undertaken by a law enforcement agency of a foreign government, or in relation to a legal proceeding undertaken by a foreign government to the extent the enforcement action is consistent with rules and regulations of a regional fisheries management organization (as that term is defined by the United Nation's <sup>1</sup> Food and Agriculture Organization Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing) of which the United States is a member, or the Secretary has determined that the enforcement action is consistent with the requirements under Federal law for enforcement actions with respect to illegal, unreported, and unregulated fishing.

###### **(B) Data confidentiality provisions not applicable**

The data confidentiality provisions of section 402 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1881a) shall not apply with respect to this Act with respect to—

- (i) any obligation of the United States to share information under a regional fisheries management organization (as that term is defined by the United Nation's <sup>1</sup> Food and Agriculture Organization Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing) of which the United States is a member; or
- (ii) any information collected by the Secretary regarding foreign vessels.

#### **(e) Prohibited acts**

It is unlawful for any person—

- (1) to violate any provision of this Act or any regulation or permit issued pursuant to this Act;
- (2) to refuse to permit any officer authorized to enforce the provisions of this Act to board, search, or inspect a vessel, subject to such person's control for the purposes of conducting any search, investigation, or inspection in connection with the enforcement of this Act, any regulation promulgated under this Act, or any Act to which this section applies;
- (3) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search, investigation, or inspection described in paragraph (2);
- (4) to resist a lawful arrest for any act prohibited by this section or any Act to which this section applies;
- (5) 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 or any Act to which this section applies; or
- (6) to forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with—
  - (A) any observer on a vessel under this Act or any Act to which this section applies; or

(B) any data collector employed by the National Marine Fisheries Service or under contract to any person to carry out responsibilities under this Act or any Act to which this section applies.

**(f) Civil penalty**

Any person who commits any act that is unlawful under subsection (e) shall be liable to the United States for a civil penalty, and may be subject to a permit sanction, under section 308 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1858).

**(g) Criminal penalty**

Any person who commits an act that is unlawful under subsection (e)(2), (e)(3), (e)(4), (e)(5), or (e)(6) is deemed to be guilty of an offense punishable under section 309(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1859(b)).

**(h) Utilization of Federal agency assets**

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.

(Pub. L. 104–43, [title VI, §606, Nov. 3, 1995](#), 109 Stat. 392; Pub. L. 114–81, [title I, §101\(a\)\(1\), Nov. 5, 2015](#), 129 Stat. 650; Pub. L. 114–327, [title IV, §401\(a\), Dec. 16, 2016](#), 130 Stat. 1994.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

This Act, referred to in subsecs. (a), (c)(1), (d)(2)(B), and (e)(1), (2), and (6), probably means title VI of Pub. L. 104–43, [Nov. 3, 1995](#), 109 Stat. 391, known as the High Seas Driftnet Fishing Moratorium Protection Act, which is classified generally to sections 1826d to 1826k of this title. For complete classification of title VI to the Code, see Short Title of 1995 Amendment note set out under section 1801 of this title and Tables.

The Pacific Salmon Treaty Act of 1985, referred to in subsec. (b)(1), is Pub. L. 99–5, [Mar. 15, 1985](#), 99 Stat. 7, which is classified generally to chapter 56A (§3631 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3631 of this title and Tables.

The Dolphin Protection Consumer Information Act, referred to in subsec. (b)(2), is Pub. L. 101–627, [title IX, §901, Nov. 28, 1990](#), 104 Stat. 4465, which is classified to section 1385 of this title. For complete classification of this Act to the Code, see Tables.

The Tuna Conventions Act of 1950, referred to in subsec. (b)(3), is act [Sept. 7, 1950, ch. 907](#), 64 Stat. 777, which is classified generally to chapter 16 (§951 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 951 of this title and Tables.

The North Pacific Anadromous Stocks Act of 1992, referred to in subsec. (b)(4), is Pub. L. 102–567, [title VIII, Oct. 29, 1992](#), 106 Stat. 4309, which is classified generally to chapter 70 (§5001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

The Atlantic Tunas Convention Act of 1975, referred to in subsecs. (b)(5) and (d)(2)(A), is Pub. L. 94–70, [Aug. 5, 1975](#), 89 Stat. 385, which is classified generally to chapter 16A (§971 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 971 of this title and Tables.

The Northwest Atlantic Fisheries Convention Act of 1995, referred to in subsec. (b)(6), is Pub. L. 104–43, [title II, Nov. 3, 1995](#), 109 Stat. 377, which is classified generally to chapter 76 (§5601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5601 of this title and Tables.

The Western and Central Pacific Fisheries Convention Implementation Act, referred to in subsecs. (b)(7) and (d)(2)(A), is Pub. L. 109–479, [title V, Jan. 12, 2007](#), 120 Stat. 3635, which is classified generally to chapter 88 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Antigua Convention Implementing Act of 2015, referred to in subsec. (b)(8), is Pub. L. 114–81, [title II, Nov. 5, 2015](#), 129 Stat. 660. For complete classification of this Act to the Code, see Short Title of 2015 Amendment note set out under section 951 of this title and Tables.

The Ensuring Access to Pacific Fisheries Act, referred to in subsec. (b)(9), is Pub. L. 114–327, [Dec. 16, 2016](#), 130 Stat. 1974. For complete classification of this Act to the Code, see Short Title note set out under section 7701 of this title and Tables.

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in subsec. (d)(2)(A), is Pub. L. 94–265, [Apr. 13, 1976](#), 90 Stat. 331, which is classified principally to chapter 38 (§1801 et seq.) of this

title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

## **CODIFICATION**

Section was enacted as part of the High Seas Driftnet Fishing Moratorium Protection Act, and also as part of the Fisheries Act of 1995, and not as part of the Magnuson-Stevens Fishery Conservation and Management Act which comprises this chapter.

## **AMENDMENTS**

**2016**—Subsec. (b)(9). Pub. L. 114–327 added par. (9).

**2015**—Pub. L. 114–81 designated existing provisions as subsec. (h), inserted heading, and added subsecs. (a) to (g).

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **TRANSFER OF FUNCTIONS**

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

<sup>1</sup> So in original.

## **§1826h. Biennial report on international compliance**

### **(a) In general**

The Secretary, in consultation with the Secretary of State, shall provide to Congress, by not later than 2 years after January 12, 2007, and every 2 years thereafter, on June 1 of that year a report that includes—

- (1) the state of knowledge on the status of international living marine resources shared by the United States or subject to treaties or agreements to which the United States is a party, including a list of all such fish stocks classified as overfished, overexploited, depleted, endangered, or threatened with extinction by any international or other authority charged with management or conservation of living marine resources;
- (2) a list of nations that have been identified under section 1826j(a) or 1826k(a) of this title, including the specific offending activities and any subsequent actions taken pursuant to section 1826j or 1826k of this title;
- (3) a description of efforts taken by nations on those lists to comply take appropriate corrective action consistent with sections 1826j and 1826k of this title, and an evaluation of the progress of those efforts, including steps taken by the United States to implement those sections and to improve international compliance;
- (4) progress at the international level, consistent with section 1826i of this title, to strengthen the efforts of international fishery management organizations to end illegal, unreported, or unregulated fishing; and
- (5) steps taken by the Secretary at the international level to adopt international measures comparable to those of the United States to reduce impacts of fishing and other practices on protected living marine resources, if no international agreement to achieve such goal exists, or if the relevant international fishery or conservation organization has failed to implement effective measures to end or reduce the adverse impacts of fishing practices on such species.

### **(b) Additional information**

In addition to the information described in paragraphs (1) through (5) of subsection (a), the report shall include—

- (1) a description of the actions taken to carry out the provisions of section 1826 of this title, including—
  - (A) an evaluation of the progress of those efforts, the impacts on living marine resources, including available observer data, and specific plans for further action;
  - (B) a list and description of any new fisheries developed by nations that conduct, or authorize their nationals to conduct, large-scale driftnet fishing beyond the exclusive economic zone of any nation; and
  - (C) a list of the nations that conduct, or authorize their nationals to conduct, large-scale driftnet fishing beyond the exclusive economic zone of any nation in a manner that diminishes the effectiveness of or is inconsistent with any international agreement governing large-scale driftnet fishing to which the United States is a party or otherwise subscribes; and

- (2) a description of the actions taken to carry out the provisions of section 1822(h) of this title.

### **(c) Certification**

If, at any time, the Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, identifies any nation that warrants inclusion in the list described under subsection (b)(1) (C), due to large scale drift net fishing, the Secretary shall certify that fact to the President. Such certification shall be deemed to be a certification for the purposes of section 1978(a) of title 22.

(Pub. L. 104–43, title VI, §607, as added Pub. L. 109–479, [title IV, §403\(a\)](#), Jan. 12, 2007, 120 Stat. 3626; amended Pub. L. 114–81, [title I, §101\(i\)\(1\)](#), Nov. 5, 2015, 129 Stat. 655; Pub. L. 114–327, [title IV, §401\(b\)](#), Dec. 16, 2016, 130 Stat. 1994; Pub. L. 117–328, div. S, title II, [§205\(b\)\(2\)](#), Dec. 29, 2022, 136 Stat. 5270.)

## EDITORIAL NOTES

### CODIFICATION

Section was enacted as part of the High Seas Driftnet Fishing Moratorium Protection Act, and also as part of the Fisheries Act of 1995, and not as part of the Magnuson-Stevens Fishery Conservation and Management Act which comprises this chapter.

### AMENDMENTS

**2022**—Pub. L. 117–328, §205(b)(2), designated existing provisions as subsec. (a), inserted heading, added subsecs. (b) and (c), and realigned margins.

**2016**—Pub. L. 114–327, in introductory provisions, inserted "on June 1 of that year" after "every 2 years thereafter,".

**2015**—Par. (2). Pub. L. 114–81 substituted "that" for "whose vessels".

## §1826i. Action to strengthen international fishery management organizations

### (a) In general

The Secretary, in consultation with the Secretary of State, and in cooperation with relevant fishery management councils and any relevant advisory committees, shall take actions to improve the effectiveness of international fishery management organizations, or arrangements made pursuant to an international fishery agreement, in conserving and managing fish stocks under their jurisdiction. These actions shall include—

(1) urging international fishery management organizations to which the United States is a member—

(A) to incorporate multilateral market-related measures against member or nonmember governments whose vessels engage in illegal, unreported, or unregulated fishing;

(B) to seek adoption of lists that identify fishing vessels and vessel owners engaged in illegal, unreported, or unregulated fishing that can be shared among all members and other international fishery management organizations;

(C) to seek international adoption of a centralized vessel monitoring system in order to monitor and document capacity in fleets of all nations involved in fishing in areas under an international fishery management organization's jurisdiction;

(D) to increase use of observers and technologies needed to monitor compliance with conservation and management measures established by the organization, including vessel monitoring systems and automatic identification systems;

(E) to seek adoption of stronger port state controls in all nations, particularly those nations in whose ports vessels engaged in illegal, unreported, or unregulated fishing land or transship fish; and

(F) to adopt shark conservation measures, including measures to prohibit removal of any of the fins of a shark (including the tail) and discarding the carcass of the shark at sea;

(2) urging international fishery management organizations to which the United States is a member, as well as all members of those organizations, to adopt and expand the use of market-related measures to combat illegal, unreported, or unregulated fishing, including—

(A) import prohibitions, landing restrictions, or other market-based measures needed to enforce compliance with international fishery management organization measures, such as quotas and catch limits;

(B) import restrictions or other market-based measures to prevent the trade or importation of fish caught by vessels identified multilaterally as engaging in illegal, unreported, or unregulated fishing; and

(C) catch documentation and certification schemes to improve tracking and identification of catch of vessels engaged in illegal, unreported, or unregulated fishing, including advance transmission of catch documents to ports of entry;

(3) seeking to enter into international agreements that require measures for the conservation of sharks, including measures to prohibit removal of any of the fins of a shark (including the tail) and discarding the carcass of the shark at sea, that are comparable to those of the United States, taking into account different conditions; and

(4) urging other nations at bilateral, regional, and international levels, including the Convention on International Trade in Endangered Species of Fauna and Flora and the World Trade Organization to take all steps necessary, consistent with international law, to adopt measures and policies that will prevent fish or other living marine resources harvested by vessels engaged in illegal, unreported, or unregulated fishing from being traded or imported into their nation or territories.

## **(b) Disclosure of information**

### **(1) In general**

The Secretary, subject to the data confidentiality provisions in section 402 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1881a) except as provided in paragraph (2), may disclose, as necessary and appropriate, information, including information collected under joint authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) and the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 71 et seq.), the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 et seq.), any other statute implementing an international fishery agreement, to any other Federal or State government agency, the Food and Agriculture Organization of the United Nations, or the secretariat or equivalent of an international fishery management organization or arrangement made pursuant to an international fishery agreement, if such government, organization, or arrangement, respectively, has policies and procedures to protect such information from unintended or unauthorized disclosure.

### **(2) Exceptions**

The data confidentiality provisions in section 402 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1881a) shall not apply with respect to this Act—

- (A) for obligations of the United States to share information under a regional fisheries management organization (as that term is defined by the United Nation's <sup>1</sup> Food and Agriculture Organization Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing) of which the United States is a member; or
- (B) to any information collected by the Secretary regarding foreign vessels.

## **(c) IUU vessel lists**

The Secretary may—

(1) develop, maintain, and make public a list of vessels and vessel owners engaged in illegal, unreported, or unregulated fishing or fishing-related activities in support of illegal, unreported, or unregulated fishing, including vessels or vessel owners identified by an international fishery management organization or arrangement made pursuant to an international fishery agreement, that—

- (A) the United States is party to; or
- (B) the United States is not party to, but whose procedures and criteria in developing and maintaining a list of such vessels and vessel owners are substantially similar to such procedures and criteria adopted pursuant to an international fishery agreement to which the United States is a party; and

(2) take appropriate action against listed vessels and vessel owners, including action against fish, fish parts, or fish products from such vessels, in accordance with applicable United States law and consistent with applicable international law, including principles, rights, and obligations established in applicable international fishery management agreements and trade agreements.

## **(d) Regulations**

The Secretary may promulgate regulations to implement this section.

(Pub. L. 104–43, title VI, §608, as added Pub. L. 109–479, [title IV, §403\(a\)](#), Jan. 12, 2007, 120 Stat. 3627; amended Pub. L. 111–348, [title I, §102\(a\)](#), Jan. 4, 2011, 124 Stat. 3668; Pub. L. 114–81, [title I, §101\(b\)](#), Nov. 5, 2015, 129 Stat. 653.)

## **EDITORIAL NOTES**

## **REFERENCES IN TEXT**

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in subsec. (b)(1), is Pub. L. 94–265, [Apr. 13, 1976](#), 90 Stat. 331, which is classified principally to chapter 38 (§1801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

The Atlantic Tunas Convention Act of 1975, referred to in subsec. (b)(1), is Pub. L. 94–70, [Aug. 5, 1975](#), 89 Stat. 385, which is classified generally to chapter 16A (§971 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 971 of this title and Tables.

The Western and Central Pacific Fisheries Convention Implementation Act, referred to in subsec. (b)(1), is Pub. L. 109–479, [title V, Jan. 12, 2007](#), 120 Stat. 3635, which is classified generally to chapter 88

(§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

This Act, referred to in subsec. (b)(2), probably means title VI of Pub. L. 104–43, [Nov. 3, 1995](#), 109 Stat. 391, known as the High Seas Driftnet Fishing Moratorium Protection Act, which is classified generally to sections 1826d to 1826k of this title. For complete classification of title VI to the Code, see Short Title of 1995 Amendment note set out under section 1801 of this title and Tables.

## CODIFICATION

Section was enacted as part of the High Seas Driftnet Fishing Moratorium Protection Act, and also as part of the Fisheries Act of 1995, and not as part of the Magnuson-Stevens Fishery Conservation and Management Act which comprises this chapter.

## AMENDMENTS

**2015**—Pub. L. 114–81 designated existing provisions as subsec. (a), inserted heading and ", or arrangements made pursuant to an international fishery agreement," after "organizations" in introductory provisions, and added subsecs. (b) to (d).

**2011**—Par. (1)(F). Pub. L. 111–348, §102(a)(1), added subpar. (F).

Par. (2)(C). Pub. L. 111–348, §102(a)(2), struck out "and" at end.

Par. (3). Pub. L. 111–348, §102(a)(4), added par. (3). Former par. (3) redesignated (4).

Par. (4). Pub. L. 111–348, §102(a)(3), redesignated par. (3) as (4).

## STATUTORY NOTES AND RELATED SUBSIDIARIES

## CONSTRUCTION

Pub. L. 111–348, title I, §104, as added by Pub. L. 115–228, [§2\(1\), Aug. 2, 2018](#), 132 Stat. 1628, provided that: "Nothing in this title [see Short Title of 2011 Amendment note set out under section 1801 of this title] or the amendments made by this title shall be construed as affecting, altering, or diminishing in any way the authority of the Secretary of Commerce to establish such conservation and management measures as the Secretary considers necessary and appropriate under sections 302(a)(3) and 304(g) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(3), 1854(g))."

[Another section 104 of Pub. L. 111–348 amended section 4107 of this title, prior to repeal by Pub. L. 115–228, [§2\(1\), Aug. 2, 2018](#), 132 Stat. 1628.]

<sup>1</sup> So in original.

## §1826j. Illegal, unreported, or unregulated fishing

### (a) Identification

#### (1) Identification for actions of fishing vessels

The Secretary shall, based on a cumulative compilation and analysis of data collected and provided by international fishery management organizations and other nations and organizations, identify, and list in the report under section 1826h of this title, a nation if any fishing vessel of that nation is engaged, or has been engaged at any point during the preceding 3 years, in illegal, unreported, or unregulated fishing—

(A) that undermines the effectiveness of measures required by an international fishery management organization, taking into account whether the relevant international fishery management organization has failed to implement effective measures to end the illegal, unreported, or unregulated fishing activity by that nation or the nation is not a party to, or does not maintain cooperating status with, such organization; or

(B) where no international fishery management organization exists with a mandate to regulate the fishing activity in question.

#### (2) For actions of a nation

The Secretary shall identify, and list in such report, a nation engaging in or endorsing illegal, unreported, or unregulated fishing. In determining which nations to list in such report, the Secretary shall consider the following:

(A) Any nation that is violating, or has violated at any point during the 3 years preceding the date of the determination, conservation and management measures, including catch and other data reporting obligations and requirements, required under an international fishery management agreement to which the United States is a party.

(B) Any nation that is failing, or has failed in the 3-year period preceding the date of the determination, to effectively address or regulate illegal, unreported, or unregulated fishing within its fleets in any areas where its



vessels are fishing.

(C) Any nation that fails to discharge duties incumbent upon it under international law or practice as a flag, port, or coastal state to take action to prevent, deter, and eliminate illegal, unreported, or unregulated fishing.

(D) Any nation that has been identified as producing for export to the United States seafood-related goods through forced labor or oppressive child labor (as those terms are defined in section 11329 of the Don Young Coast Guard Authorization Act of 2022) in the most recent List of Goods Produced by Child Labor or Forced Labor in accordance with the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7101 et seq.).

### **(3) Application to other entities**

Where the provisions of this Act are applicable to nations, they shall also be applicable, as appropriate, to other entities that have competency to enter into international fishery management agreements.

### **(4) Timing**

The Secretary shall make an identification under paragraph (1) or (2) at any time that the Secretary has sufficient information to make such identification.

### **(b) Notification**

The Secretary shall notify the President and that nation of such an identification.

### **(c) Consultation**

No later than 60 days after submitting a report to Congress under section 1826h of this title, the Secretary, acting through the Secretary of State, shall—

- (1) notify nations listed in the report of the requirements of this section;
- (2) initiate consultations for the purpose of encouraging such nations to take the appropriate corrective action with respect to the offending activities of their fishing vessels identified in the report; and
- (3) notify any relevant international fishery management organization of the actions taken by the United States under this section.

### **(d) IUU certification procedure**

#### **(1) Certification**

The Secretary shall establish a procedure, consistent with the provisions of subchapter II of chapter 5 of title 5, for determining if a nation identified under subsection (a) and listed in the report under section 1826h of this title has taken appropriate corrective action with respect to the offending activities identified in the report under section 1826h of this title. The certification procedure shall provide for notice and an opportunity for comment by any such nation. The Secretary shall determine, on the basis of the procedure, and certify to the Congress no later than 90 days after the date on which the Secretary promulgates a final rule containing the procedure, and biennially thereafter in the report under section 1826h of this title—

- (A) whether the government of each nation identified under subsection (a) has provided documentary evidence that it has taken corrective action with respect to the offending activities identified in the report; or
- (B) whether the relevant international fishery management organization has implemented measures that are effective in ending the illegal, unreported, or unregulated fishing activity by vessels of that nation.

#### **(2) Alternative procedure**

The Secretary may establish a procedure to authorize, on a shipment-by-shipment, shipper-by-shipper, or other basis the importation of fish or fish products from a vessel of a nation issued a negative certification under paragraph

(1) if the Secretary determines that—

- (A) the vessel has not engaged in illegal, unreported, or unregulated fishing under an international fishery management agreement to which the United States is a party; or
- (B) the vessel is not identified by an international fishery management organization as participating in illegal, unreported, or unregulated fishing activities.

### **(3) Effect of certification determination**

#### **(A) Effect of negative certification**

The provisions of subsection (a) and paragraphs (3) and (4) of subsection (b) of section 1826a of this title shall apply to any nation that, after being identified and notified under subsection (b) has failed to take the appropriate corrective actions for which the Secretary has issued a negative certification under this subsection.

#### **(B) Effect of positive certification**

The provisions of subsection (a) and paragraphs (3) and (4) of subsection (b) of section 1826a of this title shall not apply to any nation identified under subsection (a) for which the Secretary has issued a positive certification under this subsection.

### **(e) Illegal, unreported, or unregulated fishing defined**

#### **(1) In general**

In this Act the term "illegal, unreported, or unregulated fishing" has the meaning established under paragraph (2).

#### **(2) Secretary to define term within legislative guidelines**

Within 3 months after January 12, 2007, the Secretary shall publish a definition of the term "illegal, unreported, or unregulated fishing" for purposes of this Act.

### (3) Guidelines

The Secretary shall include in the definition, at a minimum—

(A) fishing activities that violate conservation and management measures required under an international fishery management agreement to which the United States is a party, including catch limits or quotas, capacity restrictions, bycatch reduction requirements, and shark conservation measures;

(B) overfishing of fish stocks shared by the United States, for which there are no applicable international conservation or management measures or in areas with no applicable international fishery management organization or agreement, that has adverse impacts on such stocks; and

(C) fishing activity that has an adverse impact on seamounts, hydrothermal vents, and cold water corals located beyond national jurisdiction, for which there are no applicable conservation or management measures or in areas with no applicable international fishery management organization or agreement.

### (f) Authorization of appropriations

There are authorized to be appropriated to the Secretary for fiscal years 2007 through 2013 such sums as are necessary to carry out this section.

(Pub. L. 104–43, title VI, §609, as added Pub. L. 109–479, [title IV, §403\(a\), Jan. 12, 2007](#), 120 Stat. 3628; amended Pub. L. 111–348, [title I, §102\(b\), Jan. 4, 2011](#), 124 Stat. 3669; Pub. L. 114–81, [title I, §101\(c\), \(e\), \(g\)\(1\), \(2\), \(i\)\(2\)–\(4\), Nov. 5, 2015](#), 129 Stat. 654, 655; Pub. L. 114–327, [title IV, §401\(c\), Dec. 16, 2016](#), 130 Stat. 1995; Pub. L. 117–263, div. K, [title CXIII, §11337, Dec. 23, 2022](#), 136 Stat. 4102; Pub. L. 117–328, div. S, [title IV, §401\(1\), Dec. 29, 2022](#), 136 Stat. 5274.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

Section 11329 of the Don Young Coast Guard Authorization Act of 2022, referred to in subsec. (a)(2)(D), is section 11329 of div. K of Pub. L. 117–263, which is set out as a note under section 1885a of this title.

The Trafficking Victims Protection Act of 2000, referred to in subsec. (a)(2)(D), is div. A of Pub. L. 106–386, [Oct. 28, 2000](#), 114 Stat. 1466, which is classified principally to chapter 78 (§7101 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of Title 22 and Tables.

This Act, referred to in subsecs. (a)(3) and (e)(1), (2), probably means title VI of Pub. L. 104–43, [Nov. 3, 1995](#), 109 Stat. 391, known as the High Seas Driftnet Fishing Moratorium Protection Act, which is classified generally to sections 1826d to 1826k of this title. For complete classification of title VI to the Code, see Short Title of 1995 Amendment note set out under section 1801 of this title and Tables.

## CODIFICATION

Section was enacted as part of the High Seas Driftnet Fishing Moratorium Protection Act, and also as part of the Fisheries Act of 1995, and not as part of the Magnuson-Stevens Fishery Conservation and Management Act which comprises this chapter.

## AMENDMENTS

**2022**—Subsec. (a)(2). Pub. L. 117–263, §11337(a)(1), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: "Taking into account the factors described under subsection (a)(1), the Secretary shall also identify, and list in such report, a nation—

"(A) if it is violating, or has violated at any point during the preceding 3 years, conservation and management measures required under an international fishery management agreement to which the United States is a party and the violations undermine the effectiveness of such measures; or

"(B) if it is failing, or has failed in the preceding 3-year period, to effectively address or regulate illegal, unreported, or unregulated fishing in areas described under paragraph (1)(B)."

Subsec. (a)(4). Pub. L. 117–263, §11337(a)(2), added par. (4).

Subsec. (d)(3). Pub. L. 117–263, §11337(b)(1), added par. (3) and struck out former par. (3) which related to effect of certification.

Subsecs. (e) to (g). Pub. L. 117–328, §401(1), redesignated subsecs. (f) and (g) as (e) and (f), respectively, and struck out former subsec. (e) which related to recordkeeping requirements.

Pub. L. 117–263, §11337(b)(2), (3), added subsec. (e) and redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

**2016**—Subsec. (a)(1). Pub. L. 114–327 substituted "any fishing vessel of that nation is engaged, or has" for "fishing vessels of that nation are engaged, or have" in introductory provisions.

**2015**—Subsec. (a). Pub. L. 114–81, §101(g)(1), (2), designated existing provisions as par. (1), inserted heading, and, in introductory provisions, inserted ", based on a cumulative compilation and analysis of data collected and provided by international fishery management organizations and other nations and organizations," after "shall" and substituted "3 years" for "2 years"; redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), realigned margins, and, in subpar. (A), inserted "that undermines the effectiveness of measures required by an international fishery management organization, taking into account whether" before "the relevant" and struck out "vessels of" after "activity by"; and added pars. (2) and (3).

Subsec. (b). Pub. L. 114–81, §101(c), amended subsec. (b) generally. Prior to amendment, text read as follows: "An identification under subsection (a) or section 1826k(a) of this title is deemed to be an identification under section 1826a(b)(1)(A) of this title, and the Secretary shall notify the President and that nation of such identification."

Subsec. (d)(1). Pub. L. 114–81, §101(i)(2), struck out "of its fishing vessels" after "offending activities" in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 114–81, §101(i)(3), struck out "of its fishing vessels" after "offending activities".

Subsec. (d)(2). Pub. L. 114–81, §101(i)(4), in introductory provisions, substituted "to authorize" for "for certification", inserted "the importation" after "or other basis", struck out "harvesting" before "nation", and substituted "issued a negative certification under paragraph (1)" for "not certified under paragraph (1)".

Subsec. (d)(3)(A)(i). Pub. L. 114–81, §101(e), struck out "that has not been certified by the Secretary under this subsection, or" after "subsection (a)".

**2011**—Subsec. (e)(3)(A). Pub. L. 111–348 substituted "bycatch reduction requirements, and shark conservation measures;" for "and bycatch reduction requirements;".

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### CONSTRUCTION

Nothing in amendment by Pub. L. 111–348 to be construed as affecting, altering, or diminishing the authority of the Secretary of Commerce to establish such conservation and management measures as the Secretary considers necessary and appropriate under sections 1852(a)(3) and 1854(g) of this title, see section 104 of Pub. L. 111–348, set out as a note under section 1826i of this title.

## §1826k. Equivalent conservation measures

### (a) Identification

#### (1) In general

The Secretary shall identify and list in the report under section 1826h of this title—

(A) a nation if—

(i) any fishing vessel of that nation is engaged, or has been engaged during the 3 years preceding the date of the determination, in fishing activities or practices on the high seas or within the exclusive economic zone of any nation, that have resulted in bycatch of a protected living marine resource; and

(ii) the vessel's flag state has not adopted, implemented, and enforced a regulatory program governing such fishing designed to end or reduce such bycatch that is comparable in effectiveness to the regulatory program of the United States, taking into account differing conditions; and

(B) a nation if—

(i) any fishing vessel of that nation is engaged, or has engaged during the 3 years preceding the date of the determination, in fishing activities on the high seas or within the exclusive economic zone of another nation that target or incidentally catch sharks; and

(ii) the vessel's flag state has not adopted, implemented, and enforced a regulatory program to provide for the conservation of sharks, including measures to prohibit removal of any of the fins of a shark, including the tail, before landing the shark in port, that is comparable to that of the United States.

#### (2) Timing

The Secretary shall make an identification under paragraph (1) at any time that the Secretary has sufficient information to make such identification.

### (b) Consultation and negotiation

The Secretary of State, acting in consultation with the Secretary, shall—

(1) notify, as soon as practicable, the President and nations that are engaged in, or that have any fishing vessels engaged in, fishing activities or practices described in subsection (a), about the provisions of this Act;

(2) initiate discussions as soon as practicable with all foreign nations that are engaged in, or a fishing vessel of which has engaged in, fishing activities described in subsection (a), for the purpose of entering into bilateral and multilateral treaties with such nations to protect such species and to address any underlying failings or gaps that may have contributed to identification under this Act; and

(3) initiate the amendment of any existing international treaty for the protection and conservation of such species to which the United States is a party in order to make such treaty consistent with the purposes and policies of this section.

### **(c) Conservation certification procedure**

#### **(1) Determination**

The Secretary shall establish a procedure consistent with the provisions of subchapter II of chapter 5 of title 5 for determining whether the government of a harvesting nation identified under subsection (a) and listed in the report under section 1826h of this title—

(A) has provided documentary evidence of the adoption of a regulatory program governing the conservation of the protected living marine resource that is comparable to that of the United States, taking into account different conditions, and which, in the case of pelagic longline fishing, includes mandatory use of circle hooks, careful handling and release equipment, and training and observer programs; and

(B) has established a management plan containing requirements that will assist in gathering species-specific data to support international stock assessments and conservation enforcement efforts for protected living marine resources.

#### **(2) Procedural requirement**

The procedure established by the Secretary under paragraph (1) shall include notice and opportunity for comment by the public and any such nation.

#### **(3) Certification**

The Secretary shall certify to the Congress by January 31, 2007, and biennially thereafter whether each such nation has provided the documentary evidence described in paragraph (1)(A) and established a management plan described in paragraph (1)(B).

#### **(4) Alternative procedure**

The Secretary may establish a procedure to authorize, on a shipment-by-shipment, shipper-by-shipper, or other basis the importation of fish or fish products from a vessel of a nation issued a negative certification under paragraph (1) if the Secretary determines that such imports were harvested by practices that do not result in bycatch of a protected marine species, or were harvested by practices that—

(A) are comparable to those of the United States, taking into account different conditions; and

(B) include the gathering of species specific data that can be used to support international and regional stock assessments and conservation efforts for protected living marine resources.

#### **(5) Effect of certification**

The provisions of section 1826a(a) and section 1826a(b)(3) and (4) of this title shall apply to any nation identified under subsection (a) for which the Secretary has issued a negative certification under this subsection, but shall not apply to any nation identified under subsection (a) for which the Secretary has issued a positive certification under this subsection.

### **(d) International cooperation and assistance**

To the greatest extent possible consistent with existing authority and the availability of funds, the Secretary shall—

(1) provide appropriate assistance to nations identified by the Secretary under subsection (a) and international organizations of which those nations are members to assist those nations in qualifying for certification under subsection (c);

(2) undertake, where appropriate, cooperative research activities on species statistics and improved harvesting techniques, with those nations or organizations;

(3) encourage and facilitate the transfer of appropriate technology to those nations or organizations to assist those nations in qualifying for certification under subsection (c); and

(4) provide assistance to those nations or organizations in designing and implementing appropriate fish harvesting plans.

### **(e) Protected living marine resource defined**

In this section the term "protected living marine resource"—

(1) except as provided in paragraph (2), means nontarget fish, sea turtles, or marine mammals that are protected under United States law or international agreement, including—

(A) the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.);

(B) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(C) the Shark Finning Prohibition Act (16 U.S.C. 1822 note); and

(D) the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington March 3, 1973 (27 UST 1087; TIAS 8249); but

(2) does not include species, except sharks, managed under the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.], the Atlantic Tunas Convention Act [16 U.S.C. 971 et seq.], or any international fishery management agreement.

#### **(f) Authorization of appropriations**

There are authorized to be appropriated to the Secretary for fiscal years 2007 through 2013 such sums as are necessary to carry out this section.

(Pub. L. 104–43, title VI, §610, as added Pub. L. 109–479, [title IV, §403\(a\), Jan. 12, 2007](#), 120 Stat. 3630; amended Pub. L. 111–348, [title I, §102\(c\)\(1\), Jan. 4, 2011](#), 124 Stat. 3669; Pub. L. 114–81, [title I, §101\(d\), \(f\), \(g\)\(3\), \(i\)\(5\), Nov. 5, 2015](#), 129 Stat. 654, 655; Pub. L. 114–327, [title IV, §401\(d\), Dec. 16, 2016](#), 130 Stat. 1995; Pub. L. 117–263, [div. K, title CXIII, §11338, Dec. 23, 2022](#), 136 Stat. 4103; Pub. L. 117–328, [div. S, title IV, §401\(2\), Dec. 29, 2022](#), 136 Stat. 5274.)

### **EDITORIAL NOTES**

#### **REFERENCES IN TEXT**

This Act, referred to in subsec. (b)(1), (2), probably means title VI of Pub. L. 104–43, [Nov. 3, 1995](#), 109 Stat. 391, known as the High Seas Driftnet Fishing Moratorium Protection Act, which is classified generally to sections 1826d to 1826k of this title. For complete classification of title VI to the Code, see Short Title of 1995 Amendment note set out under section 1801 of this title and Tables.

Section 1826a(a) and section 1826a(b)(3) and (4) of this title, referred to in subsec. (c)(5), was in the original "section 101(a) and section 101(b)(3) and (4) of this Act (16 U.S.C. 1826a(a), (b)(3), and (b)(4))" and was translated as meaning section 101(a) and section 101(b)(3) and (4) of the High Seas Driftnet Fisheries Enforcement Act, to reflect the probable intent of Congress.

The Marine Mammal Protection Act of 1972, referred to in subsec. (e)(1)(A), is Pub. L. 92–522, [Oct. 21, 1972](#), 86 Stat. 1027, which is classified generally to chapter 31 (§1361 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1361 of this title and Tables.

The Endangered Species Act of 1973, referred to in subsec. (e)(1)(B), is Pub. L. 93–205, [Dec. 28, 1973](#), 87 Stat. 884, which is classified principally to chapter 35 (§1531 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of this title and Tables.

The Shark Finning Prohibition Act, referred to in subsec. (e)(1)(C), is Pub. L. 106–557, [Dec. 21, 2000](#), 114 Stat. 2772, which is set out as a note under section 1822 of this title. For complete classification of this Act to the Code, see Tables.

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in subsec. (e)(2), is Pub. L. 94–265, [Apr. 13, 1976](#), 90 Stat. 331, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

The Atlantic Tunas Convention Act, referred to in subsec. (e)(2), probably means the Atlantic Tunas Convention Act of 1975, Pub. L. 94–70, [Aug. 5, 1975](#), 89 Stat. 385, which is classified generally to chapter 16A (§971 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 971 of this title and Tables.

### **CODIFICATION**

Section was enacted as part of the High Seas Driftnet Fishing Moratorium Protection Act, and also as part of the Fisheries Act of 1995, and not as part of the Magnuson-Stevens Fishery Conservation and Management Act which comprises this chapter.

### **AMENDMENTS**

**2022**—Subsec. (a). Pub. L. 117–263, §11338(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) related to identification of nations with certain fishing activities that resulted in bycatch of protected living marine resources and that targeted or incidentally caught sharks.

Subsec. (b). Pub. L. 117–263, §11338(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) related to consultation and negotiation with foreign governments regarding bilateral and multilateral treaties and agreements to protect certain species.

Subsec. (b)(3), (4). Pub. L. 117–328, §401(2)(A), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: "seek agreements calling for international restrictions on fishing activities or practices described in subsection (a) through the United Nations, the Committee on Fisheries of the Food and Agriculture Organization of the United Nations, and appropriate international fishery management bodies; and".

Subsec. (c)(2). Pub. L. 117–263, §11338(c)(1), inserted "the public and" after "comment by".

Subsec. (c)(4)(C). Pub. L. 117–328, §401(2)(B), struck out subpar. (C) which read as follows: "ensure that any such fish or fish products authorized for entry under this section are imported consistent with the reporting and the recordkeeping requirements of the Seafood Import Monitoring Program established in subpart Q of part 300 of title 50, Code of Federal Regulations (or any successor regulation)."

Pub. L. 117–263, §11338(c)(2), added subpar. (C).

Subsec. (c)(5). Pub. L. 117–263, §11338(c)(3), struck out "(except to the extent that such provisions apply to sport fishing equipment or fish or fish products not caught by the vessels engaged in illegal, unreported, or unregulated fishing)" after "section 1826a(b)(3) and (4) of this title".

Subsec. (e)(1). Pub. L. 117–263, §11338(d), added par. (1) and struck out former par. (1) which read as follows: "means non-target fish, sea turtles, or marine mammals that are protected under United States law or international agreement, including the Marine Mammal Protection Act, the Endangered Species Act, the Shark Finning Prohibition Act, and the Convention on International Trade in Endangered Species of Wild Flora and Fauna; but".

**2016**—Subsec. (a)(2)(A). Pub. L. 114–327 substituted "3 years" for "calendar year".

**2015**—Subsec. (a)(1)(A). Pub. L. 114–81, §101(g)(3), (i)(5)(A), substituted "3 years" for "calendar year" and "practices—" for "practices;" in introductory provisions.

Subsec. (b)(1). Pub. L. 114–81, §101(d), amended par. (1) generally. Prior to amendment, text read as follows: "notify, as soon as possible, other nations whose vessels engage in fishing activities or practices described in subsection (a), about the provisions of sections 1826d to 1826k of this title;"

Subsec. (c)(4). Pub. L. 114–81, §101(i)(5)(B), added introductory provisions and subpar. (A) and struck out former introductory provisions and subpar. (A) which related to alternative procedure for certification of fish or fish products from a vessel of a harvesting nation not certified under paragraph (3).

Subsec. (c)(5). Pub. L. 114–81, §101(f), struck out "that has not been certified by the Secretary under this subsection, or" after "subsection (a)".

**2011**—Subsec. (a). Pub. L. 111–348, §102(c)(1)(A), struck out ", a nation if" after "section 1826h of this title" in introductory provisions.

Pub. L. 111–348, §102(c)(1)(B)–(G), redesignated pars. (1) to (3) as subpars. (A) to (C), respectively, realigned margins, inserted "(1) a nation if—" before subpar. (A), as so redesignated, redesignated former subpars. (A) and (B) of par. (1) as cls. (i) and (ii) of subpar. (A), respectively, realigned margins, and added par. (2).

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### CONSTRUCTION

Nothing in section 102(c) of Pub. L. 111–348 (amending this section and enacting provisions set out as a note below) to be construed as affecting, altering, or diminishing the authority of the Secretary of Commerce to establish such conservation and management measures as the Secretary considers necessary and appropriate under sections 1852(a)(3) and 1854(g) of this title, see section 104 of Pub. L. 111–348, set out as a note under section 1826i of this title.

### INITIAL IDENTIFICATIONS

Pub. L. 111–348, [title I, §102\(c\)\(2\), Jan. 4, 2011](#), 124 Stat. 3669, provided that: "The Secretary of Commerce shall begin making identifications under paragraph (2) of section 610(a) of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826k(a)), as added by paragraph (1)(G), not later than 1 year after the date of the enactment of this Act [Jan. 4, 2011]."

## §1827. Observer program regarding certain foreign fishing

### (a) Definitions

As used in this section—

- (1) The term "Act of 1976" means the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).
- (2) The term "billfish" means any species of marlin, spearfish, sailfish or swordfish.
- (3) The term "Secretary" means the Secretary of Commerce.

### (b) Observer program

The Secretary shall establish a program under which a United States observer will be stationed aboard each foreign fishing vessel while that vessel—

- (1) is in waters that are within—



(A) the fishery conservation zone established under section 101 of the Act of 1976 [16 U.S.C. 1811],<sup>1</sup> and  
 (B) the Convention area as defined in Article I of the International Convention for the Conservation of Atlantic Tunas; and

(2) is taking or attempting to take any species of fish if such taking or attempting to take may result in the incidental taking of billfish.

The Secretary may acquire observers for such program through contract with qualified private persons.

**(c) Functions of observers**

United States observers, while aboard foreign fishing vessels as required under subsection (b), shall carry out such scientific and other functions as the Secretary deems necessary or appropriate to carry out this section.

**(d) Fees**

There is imposed for each year after 1980 on the owner or operator of each foreign fishing vessel that, in the judgment of the Secretary, will engage in fishing in waters described in subsection (b)(1) during that year which may result in the incidental taking of billfish a fee in an amount sufficient to cover all of the costs of providing an observer aboard that vessel under the program established under subsection (a). The fees imposed under this subsection for any year shall be paid to the Secretary before that year begins. All fees collected by the Secretary under this subsection shall be deposited in the Fund established by subsection (e).

**(e) Fund**

There is established in the Treasury of the United States the Foreign Fishing Observer Fund. The Fund shall be available to the Secretary as a revolving fund for the purpose of carrying out this section. The Fund shall consist of the fees deposited into it as required under subsection (d). All payments made by the Secretary to carry out this section shall be paid from the Fund, only to the extent and in the amounts provided for in advance in appropriation Acts. Sums in the Fund which are not currently needed for the purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

**(f) Prohibited acts**

(1) It is unlawful for any person who is the owner or operator of a foreign fishing vessel to which this section applies

- (A) to violate any regulation issued under subsection (g);
- (B) to refuse to pay the fee imposed under subsection (d) after being requested to do so by the Secretary; or
- (C) to refuse to permit an individual who is authorized to act as an observer under this section with respect to that vessel to board the vessel for purposes of carrying out observer functions.

(2) Section 308 of the Act of 1976 [16 U.S.C. 1858] (relating to civil penalties) applies to any act that is unlawful under paragraph (1), and for purposes of such application the commission of any such act shall be treated as an act the commission of which is unlawful under section 307 of the Act of 1976 [16 U.S.C. 1857].

**(g) Regulations**

The Secretary shall issue such regulations as are necessary or appropriate to carry out this section.

(Pub. L. 96–339, §2, Sept. 4, 1980, 94 Stat. 1069; Pub. L. 96–561, title II, §238(b), Dec. 22, 1980, 94 Stat. 3300; Pub. L. 104–208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009–41.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in subsec. (a)(1), is Pub. L. 94–265, Apr. 13, 1976, 90 Stat. 331, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

Section 101 of the Act of 1976 [16 U.S.C. 1811], referred to in subsec. (b)(1)(A), which established the fishery conservation zone, was amended generally by Pub. L. 99–659, title I, §101(b), Nov. 14, 1986, 100 Stat. 3706, and now relates to United States sovereign rights to fish and fishery management authority within the exclusive economic zone.

**CODIFICATION**

Section was not enacted as part of the Magnuson-Stevens Fishery Conservation and Management Act which comprises this chapter.

**AMENDMENTS**

**1996**—Subsec. (a)(1). Pub. L. 104–208 substituted "Magnuson-Stevens Fishery" for "Magnuson Fishery".

**1980**—Subsec. (a)(1). Pub. L. 96–561 substituted "Magnuson Fishery Conservation and Management Act" for "Fishery Conservation and Management Act of 1976".

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–208, [div. A, title I, §101\(a\) \[title II, §211\(b\)\]](#), [Sept. 30, 1996](#), 110 Stat. 3009, [3009–41](#), provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

### EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–561, [title II, §238\(b\)](#), [Dec. 22, 1980](#), 94 Stat. 3300, provided that the amendment made by that section is effective 15 days after Dec. 22, 1980.

<sup>1</sup> See References in Text note below.

## §1827a. Prohibition on sale of billfish

### (a) Prohibition

No person shall offer for sale, sell, or have custody, control, or possession of for purposes of offering for sale or selling billfish or products containing billfish.

### (b) Penalty

For purposes of section 1858(a) of this title, a violation of this section shall be treated as an act prohibited by section 1857 of this title.

### (c) Exemptions for traditional fisheries and markets

(1) Subsection (a) does not apply to billfish caught by US fishing vessels and landed and retained in the State of Hawaii or Pacific Insular Areas as defined in section 1802(35) of this title.

(2) Subsection (a) does not apply to billfish landed by foreign fishing vessels in the Pacific Insular Areas when the foreign caught billfish is exported to non-US markets or retained within Hawaii and the Pacific Insular Areas for local consumption.

### (d) Billfish defined

In this section the term "billfish"—

(1) means any fish of the species—

- (A) *Makaira nigricans* (blue marlin);
- (B) *Kajikia audax* (striped marlin);
- (C) *Istiompax indica* (black marlin);
- (D) *Istiophorus platypterus* (sailfish);
- (E) *Tetrapturus angustirostris* (shortbill spearfish);
- (F) *Kajikia albida* (white marlin);
- (G) *Tetrapturus georgii* (roundscale spearfish);
- (H) *Tetrapturus belone* (Mediterranean spearfish); and
- (I) *Tetrapturus pfluegeri* (longbill spearfish); and

(2) does not include the species *Xiphias gladius* (swordfish).

(Pub. L. 112–183, [§4, Oct. 5, 2012](#), 126 Stat. 1422; Pub. L. 115–228, [§1, Aug. 2, 2018](#), 132 Stat. 1628.)

## EDITORIAL NOTES

### CODIFICATION

Section was enacted as part of the Billfish Conservation Act of 2012 and not as part of the Magnuson-Stevens Fishery Conservation and Management Act which comprises this chapter.

### AMENDMENTS

**2018**—Subsec. (c)(1). Pub. L. 115–228 inserted "and retained" after "landed".

## STATUTORY NOTES AND RELATED SUBSIDIARIES

## FINDINGS

Pub. L. 112–183, §2, Oct. 5, 2012, 126 Stat. 1422, provided that: "Congress finds the following:

"(1) The United States carefully regulates its domestic fisheries for billfish and participates in international fishery management bodies in the Atlantic and Pacific.

"(2) Global billfish populations have declined significantly, however, because of overfishing primarily through retention of bycatch by non-United States commercial fishing fleets.

"(3) Ending the importation of foreign-caught billfish for sale in the United States aligns with U.S. management measures of billfish and protects the significant economic benefits to the U.S. economy of recreational fishing and marine commerce and the traditional cultural fisheries."

## §1828. Foreign fishing incursions

### (a) In general

Not later than 180 days after July 11, 2006, the Secretary of the department in which the Coast Guard is operating shall provide to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on steps that the Coast Guard will take to significantly improve the Coast Guard's detection and interdiction of illegal incursions into the United States exclusive economic zone by foreign fishing vessels.

### (b) Specific issues to be addressed

The report shall—

(1) focus on areas in the exclusive economic zone where the Coast Guard has failed to detect or interdict such incursions in the 4-fiscal-year period beginning with fiscal year 2000, including such areas in the Western/Central Pacific and the Bering Sea; and

(2) include an evaluation of the potential use of unmanned aircraft and offshore platforms for detecting or interdicting such incursions.

### (c) Biennial updates

The Secretary shall provide biannual reports updating the Coast Guard's progress in detecting or interdicting such incursions to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

(Pub. L. 109–241, title VIII, §804, July 11, 2006, 120 Stat. 563.)

## EDITORIAL NOTES

## CODIFICATION

Section was enacted as part of the Coast Guard and Maritime Transportation Act of 2006, and not as part of the Magnuson-Stevens Fishery Conservation and Management Act which comprises this chapter.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

## COMBINATION OF FISHERIES ENFORCEMENT PLANS AND FOREIGN FISHING INCURSION REPORTS

Pub. L. 111–207, §4(b), July 27, 2010, 124 Stat. 2251, as amended by Pub. L. 113–281, title II, §221(a)(5), Dec. 18, 2014, 128 Stat. 3037, provided that: "The Secretary of the department in which the Coast Guard is operating shall combine the reports required under section 224 of the Coast Guard and Maritime Transportation Act of 2004 (16 U.S.C. 1861b) and section 804 of the Coast Guard and Maritime Transportation Act of 2006 (16 U.S.C. 1828) into a single annual report for fiscal years beginning after fiscal year 2010. No report shall be required under this subsection, including that no report shall be required under section 224 of the Coast Guard and Maritime Transportation Act of 2004 or section 804 of the Coast Guard and Maritime Transportation Act of 2006, for fiscal years beginning after fiscal year 2014."

## §1829. International monitoring and compliance

### (a) In general

The Secretary may undertake activities to promote improved monitoring and compliance for high seas fisheries, or fisheries governed by international fishery management agreements, and to implement the requirements of this

subchapter.

**(b) Specific authorities**

In carrying out subsection (a), the Secretary may—

(1) share information on harvesting and processing capacity and illegal, unreported and unregulated fishing on the high seas, in areas covered by international fishery management agreements, and by vessels of other nations within the United States exclusive economic zone, with relevant law enforcement organizations of foreign nations and relevant international organizations;

(2) further develop real time information sharing capabilities, particularly on harvesting and processing capacity and illegal, unreported and unregulated fishing;

(3) participate in global and regional efforts to build an international network for monitoring, control, and surveillance of high seas fishing and fishing under regional or global agreements;

(4) support efforts to create an international registry or database of fishing vessels, including by building on or enhancing registries developed by international fishery management organizations;

(5) enhance enforcement capabilities through the application of commercial or governmental remote sensing technology to locate or identify vessels engaged in illegal, unreported, or unregulated fishing on the high seas, including encroachments into the exclusive economic zone by fishing vessels of other nations;

(6) provide technical or other assistance to developing countries to improve their monitoring, control, and surveillance capabilities; and

(7) support coordinated international efforts to ensure that all large-scale fishing vessels operating on the high seas are required by their flag State to be fitted with vessel monitoring systems no later than December 31, 2008, or earlier if so decided by the relevant flag State or any relevant international fishery management organization.

(Pub. L. 94–265, title II, §207, as added Pub. L. 109–479, [title IV, §401, Jan. 12, 2007](#), 120 Stat. 3625.)