

United States, as stated by Presidential Proclamation Numbered 5030, dated March 10, 1983, and reflected in this chapter or other existing law.

(h) “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.

(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.)

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. (g), is set out under section 1453 of this title.

This chapter, referred to in subsec. (g), was in the original “this Act”, meaning Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, 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

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) of this section” for “subsection (e)(6) of this section”.

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”.

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.

§ 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 the Treasury shall, in accordance with recognized principles of 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); and

(B) deny entry of that vessel to any place in the United States and to the navigable waters of the United States.

(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 or illegal, unreported, or unregulated 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 or illegal, unreported, or unregulated 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 or illegal, unreported, or unregulated 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
- (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), the Secretary shall determine whether—

- (i) any prohibition established under paragraph (3) is insufficient to cause that nation to terminate large-scale driftnet fishing or illegal, unreported, or unregulated fishing conducted by its nationals and vessels beyond the exclusive economic zone of any nation; 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 determina-

tion 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.)

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

In subsec. (a)(2)(A), “section 60105 of title 46” substituted for “section 4197 of the Revised Statutes of the United States (46 App. U.S.C. 91)” on authority of Pub. L. 109-304, §18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted section 60105 of Title 46, Shipping.

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

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”.

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 multi-year 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 or illegal, unreported, or unregulated fishing by its nationals and vessels beyond the exclusive economic zone of any nation.

(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.)

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

2007—Pub. L. 109-479 inserted “or illegal, unreported, or unregulated fishing” after “driftnet fishing”.

§ 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.)

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.