

(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 inter-

national 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 author-

ized 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 man-

agement 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 with-

in 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".

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, 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.

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).

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.)

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101-627, §105(b)(1)(A), inserted “including fisheries for tuna species,” after “au-