

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(1), 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, referred to in subsec. (e)(1), probably means the Marine Mammal Protection Act of 1972, Pub. L. 92-522, Oct. 21, 1972, 86 Stat. 1027, as amended, 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, referred to in subsec. (e)(1), probably means the Endangered Species Act of 1973, Pub. L. 93-205, Dec. 28, 1973, 87 Stat. 884, as amended, 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), 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, as amended, 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, as amended, 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

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).

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],¹ 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 sub-

¹ See References in Text note below.

section (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.)

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, as amended, 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”.

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.

§ 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.)

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.