

(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 “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”.

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; and

(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.

(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; 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.

(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 conclu-

sively 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) Report

Not later than January 1, 1991, and every year thereafter until the purposes of this section are met, the Secretary, after consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report—

(1) describing the steps taken to carry out the provisions of this section, particularly subsection (c);

(2) evaluating the progress of those efforts, the impacts on living marine resources, including available observer data, and specifying plans for further action;

(3) containing 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

(4) containing 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.

(f) 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 (e)(4), 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.

(g) 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.

(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)” 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”.

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 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.

(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).