

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;”.

#### 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

The Secretary shall identify, and list in the report under section 1826h of this title—

(1) a nation if—

(A) fishing vessels of that nation are engaged, or have been engaged during the preceding 3 years in fishing activities or practices—

(i) in waters beyond any national jurisdiction that result in bycatch of a protected living marine resource; or

(ii) beyond the exclusive economic zone of the United States that result in bycatch of a protected living marine resource shared by the United States;

(B) the relevant international organization for the conservation and protection of such resources or the relevant international or regional fishery organization has failed to implement effective measures to end or reduce such bycatch, or the nation is not a party to, or does not maintain cooperating status with, such organization; and

(C) the nation has not adopted a regulatory program governing such fishing practices designed to end or reduce such bycatch that is comparable to that of the United States, taking into account different conditions; and

(2) a nation if—

(A) fishing vessels of that nation are engaged, or have been engaged during the preceding 3 years, in fishing activities or practices in waters beyond any national jurisdiction that target or incidentally catch sharks; and

(B) the nation has not adopted 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) and discarding the carcass of the shark at sea, that is comparable to that of the United States, taking into account different conditions.

#### (b) Consultation and negotiation

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

(1) notify, as soon as possible, the President and nations that have been identified under subsection (a), and also notify other nations whose vessels engage in fishing activities or

practices described in subsection (a), about the provisions of this section and this Act;

(2) initiate discussions as soon as possible with all foreign governments which are engaged in, or which have persons or companies engaged in, fishing activities or practices described in subsection (a), for the purpose of entering into bilateral and multilateral treaties with such countries to protect such species;

(3) seek agreements calling for international restrictions on fishing activities or practices described in subsection (a) through the United Nations, the Food and Agriculture Organization’s Committee on Fisheries, and appropriate international fishery management bodies; and

(4) 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 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 (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) 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) 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 [16 U.S.C. 1361 et seq.], the Endangered Species Act [16 U.S.C. 1531 et seq.], the Shark Finning Prohibition Act, and the Convention on International Trade in Endangered Species of Wild Flora and Fauna; 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.)

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],<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 sub-

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.

<sup>1</sup> See References in Text note below.