

**§ 1826d. Prohibition**

The United States, or any agency or official acting on behalf of the United States, may not enter into any international agreement with respect to the conservation and management of living marine resources or the use of the high seas by fishing vessels that would prevent full implementation of the global moratorium on large-scale driftnet fishing on the high seas, as such moratorium is expressed in Resolution 46/215 of the United Nations General Assembly.

(Pub. L. 104-43, title VI, §603, Nov. 3, 1995, 109 Stat. 392.)

## 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.

## CONGRESSIONAL FINDINGS

Pub. L. 104-43, title VI, §602, Nov. 3, 1995, 109 Stat. 391, provided that: “The Congress finds that—

“(1) Congress has enacted and the President has signed into law numerous Acts to control or prohibit large-scale driftnet fishing both within the jurisdiction of the United States and beyond the exclusive economic zone of any nation, including the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 (title IV, Public Law 100-220) [16 U.S.C. 1822 note], the Driftnet Act Amendments of 1990 (Public Law 101-627) [16 U.S.C. 1826], and the High Seas Driftnet Fisheries Enforcement Act (title I, Public Law 102-582) [see Short Title of 1992 Amendment note set out under section 1801 of this title];

“(2) the United States is a party to the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, also known as the Wellington Convention;

“(3) the General Assembly of the United Nations has adopted three resolutions and three decisions which established and reaffirm a global moratorium on large-scale driftnet fishing on the high seas, beginning with Resolution 44/225 in 1989 and most recently in Decision 48/445 in 1993;

“(4) the General Assembly of the United Nations adopted these resolutions and decisions at the request of the United States and other concerned nations;

“(5) the best scientific information demonstrates the wastefulness and potentially destructive impacts of large-scale driftnet fishing on living marine resources and seabirds; and

“(6) Resolution 46/215 of the United Nations General Assembly calls on all nations, both individually and collectively, to prevent large-scale driftnet fishing on the high seas.”

**§ 1826e. Negotiations**

The Secretary of State, on behalf of the United States, shall seek to enhance the implementation and effectiveness of the United Nations General Assembly resolutions and decisions regarding the moratorium on large-scale driftnet fishing on the high seas through appropriate international agreements and organizations.

(Pub. L. 104-43, title VI, §604, Nov. 3, 1995, 109 Stat. 392.)

## 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.

**§ 1826f. Certification**

The Secretary of State shall determine in writing prior to the signing or provisional application by the United States of any international agreement with respect to the conservation and management of living marine resources or the use of the high seas by fishing vessels that the prohibition contained in section 1826d of this title will not be violated if such agreement is signed or provisionally applied.

(Pub. L. 104-43, title VI, §605, Nov. 3, 1995, 109 Stat. 392.)

## 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.

**§ 1826g. Enforcement****(a) In general**

The Secretary and the Secretary of the department in which the Coast Guard is operating shall enforce this Act, and the Acts to which this section applies, in accordance with this section. Each such Secretary may, by agreement, on a reimbursable basis or otherwise, utilize the personnel services, equipment (including aircraft and vessels), and facilities of any other Federal agency, and of any State agency, in the performance of such duties.

**(b) Acts to which section applies**

This section applies to—

(1) the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3631 et seq.);

(2) the Dolphin Protection Consumer Information Act (16 U.S.C. 1385);

(3) the Tuna Conventions Act of 1950 (16 U.S.C. 951 et seq.);

(4) the North Pacific Anadromous Stocks Act of 1992 (16 U.S.C. 5001 et seq.);

(5) the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 et seq.);

(6) the Northwest Atlantic Fisheries Convention Act of 1995 (16 U.S.C. 5601 et seq.);

(7) the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 et seq.);

(8) the Antigua Convention Implementing Act of 2015; and

(9) the Ensuring Access to Pacific Fisheries Act.

**(c) Administration and enforcement****(1) In general**

The Secretary shall prevent any person from violating this Act, or any Act to which this section applies, in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though sections 308 through 311 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1858 through 1861) were incorporated into and made a part of and applicable to this Act and each such Act.

## (2) International cooperation

The Secretary may, subject to appropriations and in the course of carrying out the Secretary's responsibilities under the Acts to which this section applies, engage in international cooperation to help other nations combat illegal, unreported, and unregulated fishing and achieve sustainable fisheries.

## (d) Special rules

### (1) Additional enforcement authority

In addition to the powers of officers authorized pursuant to subsection (c), any officer who is authorized by the Secretary, or the head of any Federal or State agency that has entered into an agreement with the Secretary under subsection (a), may enforce the provisions of any Act to which this section applies, with the same jurisdiction, powers, and duties as though section 311 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861) were incorporated into and made a part of each such Act.

### (2) Disclosure of enforcement information

#### (A) In general

The Secretary, subject to the data confidentiality provisions in section 402 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1881a), may disclose, as necessary and appropriate, information, including information collected under joint authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) and the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 71 et seq.) or the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 et seq.) or other statutes implementing international fishery agreements, to any other Federal or State government agency, the Food and Agriculture Organization of the United Nations, the secretariat or equivalent of an international fishery management organization or arrangement made pursuant to an international fishery agreement, or a foreign government, if—

- (i) such government, organization, or arrangement has policies and procedures to protect such information from unintended or unauthorized disclosure; and
- (ii) such disclosure is necessary—

- (I) to ensure compliance with any law or regulation enforced or administered by the Secretary;

- (II) to administer or enforce any international fishery agreement to which the United States is a party;

- (III) to administer or enforce a binding conservation measure adopted by any international organization or arrangement to which the United States is a party;

- (IV) to assist in any investigative, judicial, or administrative enforcement proceeding in the United States; or

- (V) to assist in any law enforcement action undertaken by a law enforcement agency of a foreign government, or in relation to a legal proceeding undertaken

by a foreign government to the extent the enforcement action is consistent with rules and regulations of a regional fisheries management organization (as that term is defined by the United Nations<sup>1</sup> Food and Agriculture Organization Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing) of which the United States is a member, or the Secretary has determined that the enforcement action is consistent with the requirements under Federal law for enforcement actions with respect to illegal, unreported, and unregulated fishing.

### (B) Data confidentiality provisions not applicable

The data confidentiality provisions of section 402 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1881a) shall not apply with respect to this Act with respect to—

- (i) any obligation of the United States to share information under a regional fisheries management organization (as that term is defined by the United Nations<sup>1</sup> Food and Agriculture Organization Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing) of which the United States is a member; or
- (ii) any information collected by the Secretary regarding foreign vessels.

### (e) Prohibited acts

It is unlawful for any person—

- (1) to violate any provision of this Act or any regulation or permit issued pursuant to this Act;

- (2) to refuse to permit any officer authorized to enforce the provisions of this Act to board, search, or inspect a vessel, subject to such person's control for the purposes of conducting any search, investigation, or inspection in connection with the enforcement of this Act, any regulation promulgated under this Act, or any Act to which this section applies;

- (3) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search, investigation, or inspection described in paragraph (2);

- (4) to resist a lawful arrest for any act prohibited by this section or any Act to which this section applies;

- (5) to interfere with, delay, or prevent, by any means, the apprehension, arrest, or detection of another person, knowing that such person has committed any act prohibited by this section or any Act to which this section applies; or

- (6) to forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with—

- (A) any observer on a vessel under this Act or any Act to which this section applies; or

- (B) any data collector employed by the National Marine Fisheries Service or under contract to any person to carry out respon-

<sup>1</sup> So in original.

sibilities under this Act or any Act to which this section applies.

**(f) Civil penalty**

Any person who commits any act that is unlawful under subsection (e) shall be liable to the United States for a civil penalty, and may be subject to a permit sanction, under section 308 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1858).

**(g) Criminal penalty**

Any person who commits an act that is unlawful under subsection (e)(2), (e)(3), (e)(4), (e)(5), or (e)(6) is deemed to be guilty of an offense punishable under section 309(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1859(b)).

**(h) Utilization of Federal agency assets**

The President shall utilize appropriate assets of the Department of Defense, the United States Coast Guard, and other Federal agencies to detect, monitor, and prevent violations of the United Nations moratorium on large-scale driftnet fishing on the high seas for all fisheries under the jurisdiction of the United States and, in the case of fisheries not under the jurisdiction of the United States, to the fullest extent permitted under international law.

(Pub. L. 104-43, title VI, § 606, Nov. 3, 1995, 109 Stat. 392; Pub. L. 114-81, title I, § 101(a)(1), Nov. 5, 2015, 129 Stat. 650; Pub. L. 114-327, title IV, § 401(a), Dec. 16, 2016, 130 Stat. 1994.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a), (c)(1), (d)(2)(B), and (e)(1), (2), and (6), 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.

The Pacific Salmon Treaty Act of 1985, referred to in subsec. (b)(1), is Pub. L. 99-5, Mar. 15, 1985, 99 Stat. 7, which is classified generally to chapter 56A (§ 3631 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3631 of this title and Tables.

The Dolphin Protection Consumer Information Act, referred to in subsec. (b)(2), is Pub. L. 101-627, title IX, § 901, Nov. 28, 1990, 104 Stat. 4465, which is classified to section 1385 of this title. For complete classification of this Act to the Code, see Tables.

The Tuna Conventions Act of 1950, referred to in subsec. (b)(3), is act Sept. 7, 1950, ch. 907, 64 Stat. 777, which is classified generally to chapter 16 (§ 951 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 951 of this title and Tables.

The North Pacific Anadromous Stocks Act of 1992, referred to in subsec. (b)(4), is Pub. L. 102-567, title VIII, Oct. 29, 1992, 106 Stat. 4309, which is classified generally to chapter 70 (§ 5001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

The Atlantic Tunas Convention Act of 1975, referred to in subsecs. (b)(5) and (d)(2)(A), is Pub. L. 94-70, Aug. 5, 1975, 89 Stat. 385, 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.

The Northwest Atlantic Fisheries Convention Act of 1995, referred to in subsec. (b)(6), is Pub. L. 104-43, title II, Nov. 3, 1995, 109 Stat. 377, which is classified gen-

erally to chapter 76 (§ 5601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5601 of this title and Tables.

The Western and Central Pacific Fisheries Convention Implementation Act, referred to in subsecs. (b)(7) and (d)(2)(A), is Pub. L. 109-479, title V, Jan. 12, 2007, 120 Stat. 3635, which is classified generally to chapter 88 (§ 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Antigua Convention Implementing Act of 2015, referred to in subsec. (b)(8), is Pub. L. 114-81, title II, Nov. 5, 2015, 129 Stat. 660. For complete classification of this Act to the Code, see Short Title of 2015 Amendment note set out under section 951 of this title and Tables.

The Ensuring Access to Pacific Fisheries Act, referred to in subsec. (b)(9), is Pub. L. 114-327, Dec. 16, 2016, 130 Stat. 1974. For complete classification of this Act to the Code, see Short Title note set out under section 7701 of this title and Tables.

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in subsec. (d)(2)(A), is Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, which is classified principally to chapter 38 (§ 1801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 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. (b)(9). Pub. L. 114-327 added par. (9).

2015—Pub. L. 114-81 designated existing provisions as subsec. (h), inserted heading, and added subsecs. (a) to (g).

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.

**§ 1826h. Biennial report on international compliance**

The Secretary, in consultation with the Secretary of State, shall provide to Congress, by not later than 2 years after January 12, 2007, and every 2 years thereafter, on June 1 of that year a report that includes—

(1) the state of knowledge on the status of international living marine resources shared by the United States or subject to treaties or agreements to which the United States is a party, including a list of all such fish stocks classified as overfished, overexploited, depleted, endangered, or threatened with extinction by any international or other authority charged with management or conservation of living marine resources;

(2) a list of nations that have been identified under section 1826j(a) or 1826k(a) of this title, including the specific offending activities and any subsequent actions taken pursuant to section 1826j or 1826k of this title;