

Editorial Notes

REFERENCES IN TEXT

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in subsec. (b)(1), 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.

The Atlantic Tunas Convention Act of 1975, referred to in subsec. (b)(1), 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 Western and Central Pacific Fisheries Convention Implementation Act, referred to in subsec. (b)(1), 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.

This Act, referred to in subsec. (b)(2), 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.

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

2015—Pub. L. 114-81 designated existing provisions as subsec. (a), inserted heading and “, or arrangements made pursuant to an international fishery agreement,” after “organizations” in introductory provisions, and added subsecs. (b) to (d).

2011—Par. (1)(F). Pub. L. 111-348, §102(a)(1), added subpar. (F).

Par. (2)(C). Pub. L. 111-348, §102(a)(2), struck out “and” at end.

Par. (3). Pub. L. 111-348, §102(a)(4), added par. (3). Former par. (3) redesignated (4).

Par. (4). Pub. L. 111-348, §102(a)(3), redesignated par. (3) as (4).

Statutory Notes and Related Subsidiaries

CONSTRUCTION

Pub. L. 111-348, title I, §104, as added by Pub. L. 115-228, §2(1), Aug. 2, 2018, 132 Stat. 1628, provided that: “Nothing in this title [see Short Title of 2011 Amendment note set out under section 1801 of this title] or the amendments made by this title shall be construed as affecting, altering, or diminishing in any way the authority of the Secretary of Commerce to establish such conservation and management measures as the Secretary considers necessary and appropriate under sections 302(a)(3) and 304(g) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(3), 1854(g)).”

[Another section 104 of Pub. L. 111-348 amended section 4107 of this title, prior to repeal by Pub. L. 115-228, §2(1), Aug. 2, 2018, 132 Stat. 1628.]

§ 1826j. Illegal, unreported, or unregulated fishing**(a) Identification****(1) Identification for actions of fishing vessels**

The Secretary shall, based on a cumulative compilation and analysis of data collected and

provided by international fishery management organizations and other nations and organizations, identify, and list in the report under section 1826h of this title, a nation if any fishing vessel of that nation is engaged, or has been engaged at any point during the preceding 3 years, in illegal, unreported, or unregulated fishing—

(A) that undermines the effectiveness of measures required by an international fishery management organization, taking into account whether the relevant international fishery management organization has failed to implement effective measures to end the illegal, unreported, or unregulated fishing activity by that nation or the nation is not a party to, or does not maintain cooperating status with, such organization; or

(B) where no international fishery management organization exists with a mandate to regulate the fishing activity in question.

(2) Identification for actions of nation

Taking into account the factors described under subsection (a)(1), the Secretary shall also identify, and list in such report, a nation—

(A) if it is violating, or has violated at any point during the preceding 3 years, conservation and management measures required under an international fishery management agreement to which the United States is a party and the violations undermine the effectiveness of such measures; or

(B) if it is failing, or has failed in the preceding 3-year period, to effectively address or regulate illegal, unreported, or unregulated fishing in areas described under paragraph (1)(B).

(3) Application to other entities

Where the provisions of this Act are applicable to nations, they shall also be applicable, as appropriate, to other entities that have competency to enter into international fishery management agreements.

(b) Notification

The Secretary shall notify the President and that nation of such an identification.

(c) Consultation

No later than 60 days after submitting a report to Congress under section 1826h of this title, the Secretary, acting through the Secretary of State, shall—

(1) notify nations listed in the report of the requirements of this section;

(2) initiate consultations for the purpose of encouraging such nations to take the appropriate corrective action with respect to the offending activities of their fishing vessels identified in the report; and

(3) notify any relevant international fishery management organization of the actions taken by the United States under this section.

(d) IUU certification procedure**(1) Certification**

The Secretary shall establish a procedure, consistent with the provisions of subchapter II of chapter 5 of title 5, for determining if a na-

tion identified under subsection (a) and listed in the report under section 1826h of this title has taken appropriate corrective action with respect to the offending activities identified in the report under section 1826h of this title. The certification procedure shall provide for notice and an opportunity for comment by any such nation. The Secretary shall determine, on the basis of the procedure, and certify to the Congress no later than 90 days after the date on which the Secretary promulgates a final rule containing the procedure, and biennially thereafter in the report under section 1826h of this title—

(A) whether the government of each nation identified under subsection (a) has provided documentary evidence that it has taken corrective action with respect to the offending activities identified in the report; or

(B) whether the relevant international fishery management organization has implemented measures that are effective in ending the illegal, unreported, or unregulated fishing activity by vessels of that nation.

(2) 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—

(A) the vessel has not engaged in illegal, unreported, or unregulated fishing under an international fishery management agreement to which the United States is a party; or

(B) the vessel is not identified by an international fishery management organization as participating in illegal, unreported, or unregulated fishing activities.

(3) Effect of certification

(A) In general

The provisions of section 1826a(a) and section 1826a(b)(3) and (4) of this title—

(i) shall apply to any nation identified under subsection (a) for which the Secretary has issued a negative certification under this subsection; but

(ii) shall not apply to any nation identified under subsection (a) for which the Secretary has issued a positive certification under this subsection.

(B) Exceptions

Subparagraph (A)(i) does not apply—

(i) to the extent that such provisions would apply to sport fishing equipment or to fish or fish products not managed under the applicable international fishery agreement; or

(ii) if there is no applicable international fishery agreement, to the extent that such provisions would apply to fish or fish products caught by vessels not engaged in illegal, unreported, or unregulated fishing.

(e) Illegal, unreported, or unregulated fishing defined

(1) In general

In this Act the term “illegal, unreported, or unregulated fishing” has the meaning established under paragraph (2).

(2) Secretary to define term within legislative guidelines

Within 3 months after January 12, 2007, the Secretary shall publish a definition of the term “illegal, unreported, or unregulated fishing” for purposes of this Act.

(3) Guidelines

The Secretary shall include in the definition, at a minimum—

(A) fishing activities that violate conservation and management measures required under an international fishery management agreement to which the United States is a party, including catch limits or quotas, capacity restrictions, bycatch reduction requirements, and shark conservation measures;

(B) overfishing of fish stocks shared by the United States, for which there are no applicable international conservation or management measures or in areas with no applicable international fishery management organization or agreement, that has adverse impacts on such stocks; and

(C) fishing activity that has an adverse impact on seamounts, hydrothermal vents, and cold water corals located beyond national jurisdiction, for which there are no applicable conservation or management measures or in areas with no applicable international fishery management organization or 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, § 609, as added Pub. L. 109-479, title IV, § 403(a), Jan. 12, 2007, 120 Stat. 3628; amended Pub. L. 111-348, title I, § 102(b), Jan. 4, 2011, 124 Stat. 3669; Pub. L. 114-81, title I, § 101(c), (e), (g)(1), (2), (i)(2)-(4), Nov. 5, 2015, 129 Stat. 654, 655; Pub. L. 114-327, title IV, § 401(c), Dec. 16, 2016, 130 Stat. 1995.)

Editorial Notes

REFERENCES IN TEXT

Section 1826a(a) and section 1826a(b)(3) and (4) of this title, referred to in subsec. (d)(3)(A), 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.

This Act, referred to in subsecs. (a)(3) and (e)(1), (2), 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.

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)(1). Pub. L. 114-327 substituted “any fishing vessel of that nation is engaged, or has” for “fishing vessels of that nation are engaged, or have” in introductory provisions.

2015—Subsec. (a). Pub. L. 114-81, §101(g)(1), (2), designated existing provisions as par. (1), inserted heading, and, in introductory provisions, inserted “, based on a cumulative compilation and analysis of data collected and provided by international fishery management organizations and other nations and organizations,” after “shall” and substituted “3 years” for “2 years”; redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), realigned margins, and, in subpar. (A), inserted “that undermines the effectiveness of measures required by an international fishery management organization, taking into account whether” before “the relevant” and struck out “vessels of” after “activity by”; and added pars. (2) and (3).

Subsec. (b). Pub. L. 114-81, §101(c), amended subsec. (b) generally. Prior to amendment, text read as follows: “An identification under subsection (a) or section 1826k(a) of this title is deemed to be an identification under section 1826a(b)(1)(A) of this title, and the Secretary shall notify the President and that nation of such identification.”

Subsec. (d)(1). Pub. L. 114-81, §101(i)(2), struck out “of its fishing vessels” after “offending activities” in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 114-81, §101(i)(3), struck out “of its fishing vessels” after “offending activities”.

Subsec. (d)(2). Pub. L. 114-81, §101(i)(4), in introductory provisions, substituted “to authorize” for “for certification”, inserted “the importation” after “or other basis”, struck out “harvesting” before “nation”, and substituted “issued a negative certification under paragraph (1)” for “not certified under paragraph (1)”.

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;”.

Statutory Notes and Related Subsidiaries

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 liv-