

Calendar No. 733

115TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 115-442

SUSTAINABLE SHARK FISHERIES AND TRADE
ACT OF 2018

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 2764



DECEMBER 19, 2018.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

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DECEMBER 19, 2018.—Ordered to be printed

Mr. THUNE, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany S. 2764]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2764) to amend and enhance the High Seas Driftnet Fishing Moratorium Protection Act to improve the conservation of sharks, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 2764 is to establish a certification process to ensure that foreign nations engaging in shark trade through, or into, the United States conserve and manage sharks in a comparable manner to the United States. It would require the National Oceanic and Atmospheric Administration (NOAA) to assess other nations' fishery management regimes, target bad actors engaging in shark finning, and promote domestic, sustainable fishing worldwide.

BACKGROUND AND NEEDS

Shark finning is the practice of removing and retaining a shark's fin and discarding the carcass at sea. This practice has led to a

growing concern about the status of certain shark species.¹ Shark finning has been prohibited under Federal law since 2000.² The Shark Conservation Act of 2010 amended section 608 of the High Seas Driftnet Fishing Protection Act³ to further prohibit the removal of any of the fins of a shark (including the tail) and discarding the carcass of the shark at sea.

The Act also amended section 307 of the Magnuson-Stevens Fishery Conservation and Management Act (MSA)⁴ to prohibit the removal of any shark fins, or having custody of a detached fin, aboard a fishing vessel.⁵ Although the United States bans the practice of shark finning aboard vessels in U.S.-controlled waters, there is no Federal ban on the removal and sale of shark fins once brought ashore. Once a shark fin is detached from the body, it is almost impossible to determine whether the shark was legally caught or the fin lawfully removed. Determination of the species is also difficult, which is problematic given that some sharks are threatened with extinction.

In addition to the nationwide prohibition on shark finning, 12 States (California, Delaware, Hawaii, Illinois, Maryland, Massachusetts, Nevada, New York, Oregon, Rhode Island, Texas, and Washington) and 3 territories (American Samoa, Guam, and the Northern Mariana Islands), have already implemented bans on the sale, and in many cases the possession, of shark fins. A proposed ban is currently pending in New Jersey.

The MSA guides management of Federal fisheries resources through the use of Fishery Management Plans within eight regional councils. Sustainably managed shark fisheries, including the sale of legally harvested shark fins, provide opportunities for both commercial and recreational fishermen.⁶

In addition to the MSA, the High Seas Driftnet Fishing Moratorium Protection Act⁷ provides further conservation measures by strengthening international fisheries management organizations to address illegal, unreported, and unregulated fishing and bycatch of protected living marine resources, including sharks. That Act requires the United States to identify to Congress countries that do not have regulatory measures comparable to the United States and limit importation of certain protected species from those countries.⁸

Currently, the United States accounts for a relatively low percentage of the global shark fin trade, exporting approximately 1 percent of all shark fins traded globally.⁹ Although this is a small percentage, commercial access to sustainable domestic shark fisheries for both the fins and the meat of the shark for food is impor-

¹National Oceanic and Atmospheric Administration (NOAA), NOAA Fisheries, 2016 Shark Finning Report to Congress (<https://repository.library.noaa.gov/view/noaa/17060>) (accessed May 9, 2018).

²Shark Finning Prohibition Act (16 U.S.C. §1822 note).

³P.L. 111-348; 124 Stat. 3668.

⁴16 U.S.C. §1857.

⁵Id.

⁶NOAA, NOAA Fisheries, Shark Conservation (<https://www.fisheries.noaa.gov/national/international-affairs/shark-conservation#noaa-fisheries-role-in-shark-conservation>) (accessed May 9, 2018).

⁷P.L. 102-582.

⁸NOAA, NOAA Fisheries, Working to Combat IUU Fishing and Protect Marine Resource Globally (<https://www.fisheries.noaa.gov/resource/outreach-and-education/working-combat-iuu-fishing-and-protect-marine-resource-globally>) (accessed May 14, 2018).

⁹D.S. Shiffman, R.E. Hueter, A United States shark fin ban would undermine sustainable shark fisheries, *Marine Policy*, Volume 85, 2017 (<https://www.sciencedirect.com/science/article/pii/S0308597X17304384?via%3Dihub>) (accessed May 14, 2018).

tant for multiple fishing communities across the country. If enacted, this bill could potentially prohibit domestic companies from importing shark products from foreign fisheries that do not meet the bill's certification requirements, but this impact would be minimal. While many other countries have enacted full or partial shark finning bans, there are still hundreds of countries without bans or without proper enforcement. Establishing an import certification program for shark, ray, and skate products would reduce the number of unsustainably harvested shark fins entering U.S. markets.

SUMMARY OF PROVISIONS

If enacted, S. 2764, the Sustainable Shark Fisheries and Trade Act of 2018 would do the following:

- Amend the High Seas Driftnet Fishing Moratorium Protection Act to prohibit the importation of shark products into the United States unless certified by the Secretary of Commerce.
- Outline the process and criteria for certifying any nation that has adopted and effectively enforced regulatory programs to provide for the conservation and management of sharks, and measures to prohibit shark finning that are comparable to those of the United States.
- Include rays and skates in the seafood traceability program under the MSA.

LEGISLATIVE HISTORY

S. 2764 was introduced on April 26, 2018, by Senator Rubio (for himself and Senator Murkowski) and was referred to the Committee on Commerce, Science, and Transportation of the Senate. Senators Sullivan, Cassidy, and Van Hollen are additional cosponsors. On May 22, 2018, the Committee met in open Executive Session and by voice vote ordered S. 2764 reported favorably without amendment.

On March 30, 2017, a related bill, S. 793, the Shark Fin Trade Elimination Act of 2017, was introduced by Senator Booker (for himself and Senators Capito, Cantwell, McCain, Peters, Inhofe, Whitehouse, Wicker, Blumenthal, Portman, and Schatz) and was referred to the Committee on Commerce, Science, and Transportation of the Senate. There are 29 additional cosponsors of that bill. On May 18, 2017, the Committee met in open Executive Session and by voice vote ordered S. 793 to be reported favorably with an amendment (in the nature of a substitute). Two related bills, H.R. 1456 and H.R. 2463, were introduced in the House of Representatives on March 9, 2017, and May 16, 2017.

On March 13, 2018, an additional related bill, H.R. 5248, the Sustainable Shark Fisheries and Trade Act, was introduced by Representative Webster (for himself and Representatives Lieu, Posey, Jones, Clay, Soto, and Bilirakis) and referred to the Committee on Natural Resources and the Committee on Ways and Means of the House of Representatives. There are 23 additional cosponsors of that bill. The Subcommittee on Water, Power and Oceans of the Committee on Natural Resources of the House of Representatives held a legislative hearing on April 17, 2018, on

Marine Conservation and Shark Fishery Regulations, examining H.R. 5248 and H.R. 1456.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 2764—Sustainable Shark Fisheries and Trade Act of 2018

Summary: S. 2764 would amend the High Seas Driftnet Fishing Moratorium Protection Act to require nations that export shark products to the United States to obtain certification from the Department of Commerce to show that they practice shark conservation and prohibit shark finning. The bill also would require the National Oceanic and Atmospheric Administration (NOAA) to add rays and skates to its Seafood Import Monitoring Program.

CBO estimates that implementing S. 2764 would cost \$5 million over the 2019-2023 period, assuming appropriation of the authorized amounts. Enacting the bill could affect direct spending and revenues; therefore, pay-as-you-go procedures apply. However, CBO estimates that any such changes would have a negligible net effect on the deficit.

CBO estimates that enacting S. 2764 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

S. 2764 would impose private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the cost would be below the threshold for private-sector mandates established in UMRA (\$160 million in 2018, adjusted annually for inflation). The bill does not contain any intergovernmental mandates as defined in UMRA.

Estimated cost to the Federal Government: The estimated budgetary effect of S. 2764 is shown in the following table. The costs of the legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—						
	2018	2019	2020	2021	2022	2023	2019–2023
INCREASES IN SPENDING SUBJECT TO APPROPRIATION							
Authorization Level	0	1	1	1	1	1	5
Estimated Outlays	0	1	1	1	1	1	5

Basis of estimate: For this estimate, CBO assumes that S. 2764 will be enacted near the end of fiscal year 2018 and that the authorized amounts will be appropriated each year.

Under S. 2764 NOAA would establish and implement a shark conservation and trade fairness certification program. The bill would require the Secretary of Commerce to certify that any nation that exports shark products to the United States has adopted regulatory programs to conserve sharks and prohibits shark finning in ways that are comparable to those measures in the United States. The bill would require NOAA to issue regulations to implement the

certification program. S. 2764 also would direct NOAA to add rays and skates to its Seafood Import Monitoring Program.

Although S. 2764 would specifically authorize a total of almost \$2 million over the 2019-2023 period, CBO expects that fully developing and implementing the certified program—including rule-making, coordinating with industry, adopting a reporting and monitoring system, and overseeing additional enforcement at major ports of entry—would cost more than the authorized amounts. Using information from NOAA, CBO estimates that fully implementing S. 2764 would cost about \$5 million over the 2019-2023 period. Those costs would cover salaries, benefits, training, and travel for three new employees and about \$500,000 worth of equipment and its maintenance.

Uncertainty: Whether any additional amounts would be subsequently appropriated to NOAA if S. 2764 were enacted is unknown. The bill would authorize the appropriation of specific amounts for each year through 2024. The authorized amount in each year is less than \$500,000. Based on historical spending patterns for similar activities, CBO estimates that providing the amounts specifically authorized would cost \$2 million over the 2019-2023 period.

Pay-As-You-Go Considerations: S. 2764 could increase revenues from civil and criminal penalties resulting from importers' violations of permitting and recordkeeping requirements. Such penalties are recorded as revenues, deposited into the Crime Victims Fund, and later spent without further appropriation action. CBO expects that any additional revenues would not be significant in any year and would be offset by subsequent direct spending; therefore, CBO estimates that the net effect on the deficit would be negligible.

Increase in long-term direct spending and deficits: CBO estimates that enacting S. 2764 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

Mandates: S. 2764 would impose private-sector mandates as defined in UMRA. The bill would prohibit domestic companies from importing shark products from foreign fisheries that do not meet the bill's certification requirements. U.S. imports are a very small portion of the \$1 billion global market for shark products; in 2017, the International Trade Commission reported that the value of such imports was less than \$1 million. The cost of the mandate imposed by the prohibition would be forgone revenue from lower sales and potentially higher costs to purchase shark products at domestic prices.

S. 2764 also would add rays and skates to NOAA's Seafood Import Monitoring Program, which requires importers of listed fish or fish products to track and report certain information. The cost of the mandate would cover updating and maintaining the software used to collect and report such data.

CBO estimates that the combined cost of the two mandates would be well below the threshold established by UMRA for private-sector mandates (\$160 million in 2018, adjusted annually for inflation).

The bill does not contain any intergovernmental mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Sophie Godfrey-McKee and Robert Reese; Mandates: Zachary Byrum.

Estimate reviewed by: Kim P. Cawley, Chief, Natural and Physical Resources Cost Estimates Unit; Susan Willie, Chief, Mandates Unit; H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 2764, as reported, would not create any new programs or impose any new regulatory requirements. Therefore, it would not subject any individuals or businesses to new regulations.

ECONOMIC IMPACT

Enactment of this legislation is not expected to have a negative impact on the Nation's economy.

PRIVACY

The reported bill is not expected to impact the personal privacy of individuals.

PAPERWORK

S. 2764 would not create increases in paperwork burdens if enacted.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

This section would provide that the bill may be cited as the "Sustainable Shark Fisheries and Trade Act of 2018."

Section 2. Shark conservation and trade fairness certification.

This section would amend section 610 of the High Seas Driftnet Fishing Moratorium Protection Act¹⁰ to create a shark conservation and trade fairness certification. It would require that NOAA certify that countries seeking to import shark products into U.S. markets have, and enforce, similar regulations to those of the United States. This section would prohibit importation of shark products unless certified, and the certification would need to be renewed at least every 3 years.

¹⁰ 16 U.S.C. §1826k.

Section 3. Actions to strengthen international fishery management organizations.

This section would amend section 608(a) of the High Seas Driftnet Fishery Moratorium Protection Act¹¹ to require the Secretary of Commerce, in consultation with the Secretary of State, to do the following: take actions to improve the effectiveness of international fishing management organizations by adopting sustainable shark management practices; and seek entry into international agreements that require measures for the management of shark finning.

Section 4. Inclusion of rays and skates in Seafood Traceability Program.

This section would direct the Secretary of Commerce to revise the Seafood Traceability Program to include rays and skates within 1 year after the date of enactment of this Act.

Section 5. Rule of construction.

This section would provide that nothing in this Act should be construed to preclude or limit the right of a State or territory to adopt or enforce more stringent standards.

Section 6. Funding.

This section would authorize the appropriations necessary to carry out this Act for each of fiscal years 2019 through 2024.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

HIGH SEAS DRIFTNET FISHING MORATORIUM PROTECTION ACT

[16 U.S.C. 1826d et seq.]

SEC. 608. ACTION TO STRENGTHEN INTERNATIONAL FISHERY MANAGEMENT ORGANIZATIONS.

[16 U.S.C. 1826i]

(a) **IN GENERAL.**—The Secretary, in consultation with the Secretary of State, and in cooperation with relevant fishery management councils and any relevant advisory committees, shall take actions to improve the effectiveness of international fishery management organizations, or arrangements made pursuant to an international fishery agreement, in conserving and managing fish stocks under their jurisdiction. These actions shall include—

(1) urging international fishery management organizations to which the United States is a member—

(A) to incorporate multilateral market-related measures against member or nonmember governments whose vessels engage in illegal, unreported, or unregulated fishing;

¹¹ 16 U.S.C. §1826i.

(B) to seek adoption of lists that identify fishing vessels and vessel owners engaged in illegal, unreported, or unregulated fishing that can be shared among all members and other international fishery management organizations;

(C) to seek international adoption of a centralized vessel monitoring system in order to monitor and document capacity in fleets of all nations involved in fishing in areas under an international fishery management organization's jurisdiction;

(D) to increase use of observers and technologies needed to monitor compliance with conservation and management measures established by the organization, including vessel monitoring systems and automatic identification systems;

(E) to seek adoption of stronger port state controls in all nations, particularly those nations in whose ports vessels engaged in illegal, unreported, or unregulated fishing land or transship fish; and

[(F) to adopt shark conservation measures, 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;]

(F) to adopt shark conservation and management measures and measures to prevent shark finning that are consistent with the International Plan of Action for Conservation and Management of Sharks of the Food and Agriculture Organization of the United Nations;

(2) urging international fishery management organizations to which the United States is a member, as well as all members of those organizations, to adopt and expand the use of market-related measures to combat illegal, unreported, or unregulated fishing, including—

(A) import prohibitions, landing restrictions, or other market-based measures needed to enforce compliance with international fishery management organization measures, such as quotas and catch limits;

(B) import restrictions or other market-based measures to prevent the trade or importation of fish caught by vessels identified multilaterally as engaging in illegal, unreported, or unregulated fishing; and

(C) catch documentation and certification schemes to improve tracking and identification of catch of vessels engaged in illegal, unreported, or unregulated fishing, including advance transmission of catch documents to ports of entry;

[(3) seeking to enter into international agreements that require measures 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 are comparable to those of the United States, taking into account different conditions; and]

(3) seeking to enter into international agreements that require measures for the conservation and management of sharks and measures to prevent shark finning that are consistent with the International Plan of Action for Conservation and Management of Sharks; and

(4) urging other nations at bilateral, regional, and international levels, including the Convention on International Trade in Endangered Species of Fauna and Flora and the World Trade Organization to take all steps necessary, consistent with international law, to adopt measures and policies that will prevent fish or other living marine resources harvested by vessels engaged in illegal, unreported, or unregulated fishing from being traded or imported into their nation or territories.

(b) DISCLOSURE OF INFORMATION.—

(1) 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) except as provided in paragraph (2), 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.), the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 et seq.), any other statute implementing an international fishery agreement, to any other Federal or State government agency, the Food and Agriculture Organization of the United Nations, or the secretariat or equivalent of an international fishery management organization or arrangement made pursuant to an international fishery agreement, if such government, organization, or arrangement, respectively, has policies and procedures to protect such information from unintended or unauthorized disclosure.

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

(A) for obligations of the United States to share information under a regional fisheries management organization (as that term is defined by the United Nation's 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

(B) to any information collected by the Secretary regarding foreign vessels.

(c) IUU VESSEL LISTS.—The Secretary may—

(1) develop, maintain, and make public a list of vessels and vessel owners engaged in illegal, unreported, or unregulated fishing or fishing-related activities in support of illegal, unreported, or unregulated fishing, including vessels or vessel owners identified by an international fishery management organization or arrangement made pursuant to an international fishery agreement, that—

(A) the United States is party to; or

(B) the United States is not party to, but whose procedures and criteria in developing and maintaining a list of such vessels and vessel owners are substantially similar to such procedures and criteria adopted pursuant to an inter-

national fishery agreement to which the United States is a party; and

(2) take appropriate action against listed vessels and vessel owners, including action against fish, fish parts, or fish products from such vessels, in accordance with applicable United States law and consistent with applicable international law, including principles, rights, and obligations established in applicable international fishery management agreements and trade agreements.

(d) REGULATIONS.—The Secretary may promulgate regulations to implement this section.

SEC. 610. EQUIVALENT CONSERVATION MEASURES.

[16 U.S.C. 1826k)

(a) IDENTIFICATION.—The Secretary shall identify, and list in the report under section 607—

(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]

(A) that nation or any individual or entity from that nation has imported shark products into the United States or seeks to import shark products into the United States; and

(B) the nation has not [adopted] sought and obtained, not later than the effective date specified in paragraph (8) of subsection (g), a certification from the Secretary under that subsection that the nation has in effect 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)** *subsection (a)(1)*, 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)** *subsection (a)(1)* 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, United States Code, for determining whether the government of a harvesting nation identified under **subsection (a)** *subsection (a)(1)* and listed in the report under section 607—

(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 101(a) and section 101(b)(3) and (4) of this Act (16 U.S.C. 1826a(a), (b)(3), and (b)(4)) (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.

(6) APPLICABILITY TO CERTAIN COUNTRIES.—*This subsection does not apply to nations identified under subsection (a)(2).*

(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) or (g);

(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) or (g); 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, the Endangered Species Act, 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, the Atlantic Tunas Convention Act, 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.

(g) SHARK CONSERVATION AND TRADE FAIRNESS CERTIFICATION.—

(1) PROHIBITION ON IMPORTATION.—

(A) IN GENERAL.—*Except as provided in subparagraph (B), shark products may not be imported into the United States unless the shark products were landed in a nation*

to which the Secretary has issued a certification or partial certification under paragraph (2).

(B) *EXCEPTIONS.*—The prohibition under subparagraph (A) shall not apply to shark products that are—

(i) traded, owned, held, or otherwise possessed by an employee or agent of a governmental agency for law enforcement purposes;

(ii) used for noncommercial subsistence purposes in accordance with Federal, State, tribal, or territorial law;

(iii) used solely for display, education, conservation, or research purposes by an accredited zoo, aquarium, museum, college, or university; or

(iv) used by any other person under a State or Federal permit to conduct noncommercial scientific research.

(2) *CERTIFICATIONS.*—Pursuant to the regulations prescribed under paragraph (5), the Secretary—

(A) shall grant a certification to any nation that has adopted and effectively enforces regulatory programs to provide for the conservation and management of sharks, and measures to prohibit shark finning, that are comparable to those of the United States; and

(B) may grant a partial certification to a nation if the Secretary determines that the nation—

(i) has adopted and effectively enforces regulatory programs that are comparable to the regulatory programs of the United States to provide for the conservation and management of a specific species of shark imported into the United States or used to produce shark products imported into the United States; and

(ii) has in effect an effective ban on shark finning that is comparable to that of the United States.

(3) *EXPIRATION; RENEWAL.*—A certification or partial certification issued under this subsection—

(A) shall be effective for not more than 3 years from the date of issuance; and

(B) may be renewed in accordance with the provisions of this subsection relating to the initial issuance of the certification.

(4) *CERTAIN DETERMINATIONS.*—The Secretary shall make a determination with respect to whether to renew under paragraph (3) or revoke pursuant to paragraph (5)(A)(ii) a certification or partial certification issued under this subsection not later than 180 days after the submission of the application for renewal or the petition for revocation, as the case may be.

(5) *REGULATIONS.*—

(A) *IN GENERAL.*—Not later than 2 years after the date of the enactment of the Sustainable Shark Fisheries and Trade Act of 2018, the Secretary shall prescribe regulations under chapter 5 of title 5, United States Code, with respect to the submission, evaluation, revocation, and renewal of applications for certifications and partial certifications under paragraph (2). Such regulations shall—

(i) prescribe the content and format of applications and standards for the information to be provided in such applications; and

(ii) establish a process for petitioning the Secretary for revocation of the certification or partial certification of any nation, including standards for the information required to be provided to demonstrate that the nation no longer meets the criteria established under this subsection for the certification.

(B) **CRITERIA FOR CERTIFICATION OR PARTIAL CERTIFICATION.**—The regulations prescribed under subparagraph (A) shall establish criteria for determining whether a nation has and effectively enforces regulatory programs to provide for the conservation and management of sharks, and measures to prohibit shark finning, that are comparable to those of the United States, which shall include, at a minimum, a requirement that such programs—

(i) be consistent with the national standards for fishery conservation and management set forth at section 301(a) of the Magnuson-Stevens Conservation and Management Act (16 U.S.C. 1851(a));

(ii) provide for regularly updated management plans, scientifically established catch limits, and bycatch assessments and minimization;

(iii) include a program to prevent overfishing of sharks and rebuild overfished stocks;

(iv) require reporting and data collection;

(v) be consistent with the International Plan of Action for Conservation and Management of Sharks of the Food and Agriculture Organization of the United Nations; and

(vi) include a mechanism to ensure that, if the nation allows landings of sharks by foreign vessels that are not subject to such programs, only shark products that comply with such programs are exported to the United States.

(6) **PUBLICATION; PUBLIC COMMENT.**—The Secretary shall—

(A) publish in the Federal Register notice of applications, petitions, and decisions with respect to certifications, renewal of certifications, or revocation of certifications under this subsection; and

(B) provide an opportunity for public comment with respect to such applications, petitions, and decisions.

(7) **FINAL AGENCY ACTION.**—A decision of the Secretary with respect to the issuance, renewal, or revocation of a certification or partial certification under this subsection, or a failure to make a determination under paragraph (4) in the time required by that paragraph, shall be considered a final agency action for the purposes of chapter 7 of title 5, United States Code.

(8) **EFFECTIVE DATE.**—The prohibition under paragraph (1) shall take effect on the earlier of—

(A) the date on which regulations are prescribed under paragraph (5); or

(B) *the date that is 3 years after the date of the enactment of the Sustainable Shark Fisheries and Trade Act of 2018.*

(9) *DEFINITIONS.—In this subsection:*

(A) *SHARK.—The term “shark” means any species of the subclass Elasmobranchii.*

(B) *SHARK PRODUCT.—The term “shark product” means live sharks, whole sharks, and the meat, skin, oil, fins (including wings and tails), gill rakers, cartilage, jaws, teeth, liver, or any product containing meat, skin, oil, fins (including wings and tails), gill rakers, cartilage, jaws, teeth, or liver derived from sharks.*

(C) *SHARK FINNING.—The term “shark finning” means the removal of a shark’s fins, including the tail, and discarding the remaining carcass of the shark at sea.*

