

1996—Pub. L. 104-297 substituted “shall promote the achievement of optimum yield” for “promoting the objective of optimum utilization”.

1990—Pub. L. 101-627 amended section generally. Prior to amendment, section read as follows: “The sovereign rights and exclusive fishery management authority asserted by the United States under section 1811 of this title over fish do not include, and may not be construed to extend to, highly migratory species of fish.”

1986—Pub. L. 99-659 amended section generally. Prior to amendment, section read as follows: “The United States shall exercise exclusive fishery management authority, in the manner provided for in this chapter, over the following:

“(1) All fish within the fishery conservation zone.

“(2) All anadromous species throughout the migratory range of each such species beyond the fishery conservation zone; except that such management authority shall not extend to such species during the time they are found within any foreign nation’s territorial sea or fishery conservation zone (or the equivalent), to the extent that such sea or zone is recognized by the United States.

“(3) All Continental Shelf fishery resources beyond the fishery conservation zone.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-627, title I, §103(c), Nov. 28, 1990, 104 Stat. 4439, provided that: “The amendments made by this section [amending this section] shall take effect on January 1, 1992.”

§ 1813. Omitted

Editorial Notes

CODIFICATION

Section, Pub. L. 94-265, title I, §103, Apr. 13, 1976, 90 Stat. 336, which related to exclusion of highly migratory species of fish from exclusive fishery management authority, was omitted in the general revision of this subchapter by section 101(b) of Pub. L. 99-659. See section 1812 of this title.

SUBCHAPTER III—FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS

§ 1821. Foreign fishing

(a) In general

After February 28, 1977, no foreign fishing is authorized within the exclusive economic zone, or for anadromous species or Continental Shelf fishery resources beyond the exclusive economic zone, unless such foreign fishing—

(1) is authorized under subsections (b) or (c) or section 1824(e) of this title, or under a permit issued under section 1824(d) of this title;

(2) is not prohibited under subsection (f); and

(3) is conducted under, and in accordance with, a valid and applicable permit issued pursuant to section 1824 of this title.

(b) Existing international fishery agreements

Foreign fishing described in subsection (a) may be conducted pursuant to an international fishery agreement (subject to the provisions of section 1822(b) or (c) of this title), if such agreement—

(1) was in effect on April 13, 1976; and

(2) has not expired, been renegotiated, or otherwise ceased to be of force and effect with respect to the United States.

(c) Governing international fishery agreements

Foreign fishing described in subsection (a) may be conducted pursuant to an international

fishery agreement (other than a treaty) which meets the requirements of this subsection if such agreement becomes effective after application of section 1823 of this title. Any such international fishery agreement shall hereafter in this chapter be referred to as a “governing international fishery agreement”. Each governing international fishery agreement shall acknowledge the exclusive fishery management authority of the United States, as set forth in this chapter. It is the sense of the Congress that each such agreement shall include a binding commitment, on the part of such foreign nation and its fishing vessels, to comply with the following terms and conditions:

(1) The foreign nation, and the owner or operator of any fishing vessel fishing pursuant to such agreement, will abide by all regulations promulgated by the Secretary pursuant to this chapter, including any regulations promulgated to implement any applicable fishery management plan or any preliminary fishery management plan.

(2) The foreign nation, and the owner or operator of any fishing vessel fishing pursuant to such agreement, will abide by the requirement that—

(A) any officer authorized to enforce the provisions of this chapter (as provided for in section 1861 of this title) be permitted—

(i) to board, and search or inspect, any such vessel at any time,

(ii) to make arrests and seizures provided for in section 1861(b) of this title whenever such officer has reasonable cause to believe, as a result of such a search or inspection, that any such vessel or any person has committed an act prohibited by section 1857 of this title, and

(iii) to examine and make notations on the permit issued pursuant to section 1824 of this title for such vessel;

(B) the permit issued for any such vessel pursuant to section 1824 of this title be prominently displayed in the wheelhouse of such vessel;

(C) transponders, or such other appropriate position-fixing and identification equipment as the Secretary of the department in which the Coast Guard is operating determines to be appropriate, be installed and maintained in working order on each such vessel;

(D) United States observers required under subsection (h) be permitted to be stationed aboard any such vessel and that all of the costs incurred incident to such stationing, including the costs of data editing and entry and observer monitoring, be paid for, in accordance with such subsection, by the owner or operator of the vessel;

(E) any fees required under section 1824(b)(10) of this title be paid in advance;

(F) agents be appointed and maintained within the United States who are authorized to receive and respond to any legal process issued in the United States with respect to such owner or operator; and

(G) responsibility be assumed, in accordance with any requirements prescribed by the Secretary, for the reimbursement of United States citizens for any loss of, or

damage to, their fishing vessels, fishing gear, or catch which is caused by any fishing vessel of that nation;

and will abide by any other monitoring, compliance, or enforcement requirement related to fishery conservation and management which is included in such agreement.

(3) The foreign nation and the owners or operators of all of the fishing vessels of such nation shall not, in any year, harvest an amount of fish which exceeds such nation's allocation of the total allowable level of foreign fishing, as determined under subsection (e).

(4) The foreign nation will—

(A) apply, pursuant to section 1824 of this title, for any required permits;

(B) deliver promptly to the owner or operator of the appropriate fishing vessel any permit which is issued under that section for such vessel;

(C) abide by, and take appropriate steps under its own laws to assure that all such owners and operators comply with, section 1824(a) of this title and the applicable conditions and restrictions established under section 1824(b)(7) of this title; and

(D) take, or refrain from taking, as appropriate, actions of the kind referred to in subsection (e)(1) in order to receive favorable allocations under such subsection.

(d) Total allowable level of foreign fishing

The total allowable level of foreign fishing, if any, with respect to any fishery subject to the exclusive fishery management authority of the United States, is that portion of the optimum yield of such fishery which cannot, or will not, be harvested by vessels of the United States, as determined in accordance with this chapter. Allocations of the total allowable level of foreign fishing are discretionary, except that the total allowable level shall be zero for fisheries determined by the Secretary to have adequate or excess domestic harvest capacity.

(e) Allocation of allowable level

(1)(A) The Secretary of State, in cooperation with the Secretary, may make allocations to foreign nations from the total allowable level of foreign fishing which is permitted with respect to each fishery subject to the exclusive fishery management authority of the United States.

(B) From the determinations made under subparagraph (A), the Secretary of State shall compute the aggregate of all of the fishery allocations made to each foreign nation.

(C) The Secretary of State shall initially release to each foreign nation for harvesting up to 50 percent of the allocations aggregate computed for such nation under subparagraph (B), and such release of allocation shall be apportioned by the Secretary of State, in cooperation with the Secretary, among the individual fishery allocations determined for that nation under subparagraph (A). The basis on which each apportionment is made under this subparagraph shall be stated in writing by the Secretary of State.

(D) After the initial release of fishery allocations under subparagraph (C) to a foreign nation, any subsequent release of an allocation for any fishery to such nation shall only be made—

(i) after the lapse of such period of time as may be sufficient for purposes of making the determination required under clause (ii); and

(ii) if the Secretary of State and the Secretary, after taking into account the size of the allocation for such fishery and the length and timing of the fishing season, determine in writing that such nation is complying with the purposes and intent of this paragraph with respect to such fishery.

If the foreign nation is not determined under clause (ii) to be in such compliance, the Secretary of State shall reduce, in a manner and quantity he considers to be appropriate (I) the remainder of such allocation, or (II) if all of such allocation has been released, the next allocation of such fishery, if any, made to such nation.

(E) The determinations required to be made under subparagraphs (A) and (D)(ii), and the apportionments required to be made under subparagraph (C), with respect to a foreign nation shall be based on—

(i) whether, and to what extent, such nation imposes tariff barriers or nontariff barriers on the importation, or otherwise restricts the market access, of both United States fish and fishery products, particularly fish and fishery products for which the foreign nation has requested an allocation;

(ii) whether, and to what extent, such nation is cooperating with the United States in both the advancement of existing and new opportunities for fisheries exports from the United States through the purchase of fishery products from United States processors, and the advancement of fisheries trade through the purchase of fish and fishery products from United States fishermen, particularly fish and fishery products for which the foreign nation has requested an allocation;

(iii) whether, and to what extent, such nation and the fishing fleets of such nation have cooperated with the United States in the enforcement of United States fishing regulations;

(iv) whether, and to what extent, such nation requires the fish harvested from the exclusive economic zone for its domestic consumption;

(v) whether, and to what extent, such nation otherwise contributes to, or fosters the growth of, a sound and economic United States fishing industry, including minimizing gear conflicts with fishing operations of United States fishermen, and transferring harvesting or processing technology which will benefit the United States fishing industry;

(vi) whether, and to what extent, the fishing vessels of such nation have traditionally engaged in fishing in such fishery;

(vii) whether, and to what extent, such nation is cooperating with the United States in, and making substantial contributions to, fishery research and the identification of fishery resources; and

(viii) such other matters as the Secretary of State, in cooperation with the Secretary, deems appropriate.

(2)(A) For the purposes of this paragraph—

(i) The term “certification” means a certification made by the Secretary that nationals of a foreign country, directly or indirectly, are conducting fishing operations or engaging in trade or taking which diminishes the effectiveness of the International Convention for the Regulation of Whaling. A certification under this section shall also be deemed a certification for the purposes of section 1978(a) of title 22.

(ii) The term “remedial period” means the 365-day period beginning on the date on which a certification is issued with respect to a foreign country.

(B) If the Secretary issues a certification with respect to any foreign country, then each allocation under paragraph (1) that—

(i) is in effect for that foreign country on the date of issuance; or

(ii) is not in effect on such date but would, without regard to this paragraph, be made to the foreign country within the remedial period;

shall be reduced by the Secretary of State, in consultation with the Secretary, by not less than 50 percent.

(C) The following apply for purposes of administering subparagraph (B) with respect to any foreign country:

(i) If on the date of certification, the foreign country has harvested a portion, but not all, of the quantity of fish specified under any allocation, the reduction under subparagraph (B) for that allocation shall be applied with respect to the quantity not harvested as of such date.

(ii) If the Secretary notified the Secretary of State that it is not likely that the certification of the foreign country will be terminated under section 1978(d) of title 22 before the close of the period for which an allocation is applicable or before the close of the remedial period (whichever close first occurs) the Secretary of State, in consultation with the Secretary, shall reallocate any portion of any reduction made under subparagraph (B) among one or more foreign countries for which no certification is in effect.

(iii) If the certification is terminated under such section 1978(d) of title 22 during the remedial period, the Secretary of State shall return to the foreign country that portion of any allocation reduced under subparagraph (B) that was not reallocated under clause (ii); unless the harvesting of the fish covered by the allocation is otherwise prohibited under this chapter.

(iv) The Secretary may refund or credit, by reason of reduction of any allocation under this paragraph, any fee paid under section 1824 of this title.

(D) If the certification of a foreign country is not terminated under section 1978(d) of title 22 before the close of the last day of the remedial period, the Secretary of State—

(i) with respect to any allocation made to that country and in effect (as reduced under subparagraph (B)) on such last day, shall rescind, effective on and after the day after such last day, any unharvested portion of such allocation; and

(ii) may not thereafter make any allocation to that country under paragraph (1) until the certification is terminated.

(f) Reciprocity

Foreign fishing shall not be authorized for the fishing vessels of any foreign nation unless such nation satisfies the Secretary and the Secretary of State that such nation extends substantially the same fishing privileges to fishing vessels of the United States, if any, as the United States extends to foreign fishing vessels.

(g) Preliminary fishery management plans

The Secretary, when notified by the Secretary of State that any foreign nation has submitted an application under section 1824(b) of this title shall prepare a preliminary fishery management plan for any fishery covered by such application if the Secretary determines that no fishery management plan for that fishery will be prepared and implemented, pursuant to subchapter IV, before March 1, 1977. To the extent practicable, each such plan—

(1) shall contain a preliminary description of the fishery and a preliminary determination as to—

(A) the optimum yield from such fishery;

(B) when appropriate, the capacity and extent to which United States fish processors will process that portion of such optimum yield that will be harvested by vessels of the United States; and

(C) the total allowable level of foreign fishing with respect to such fishery;

(2) shall require each foreign fishing vessel engaged or wishing to engage in such fishery to obtain a permit from the Secretary;

(3) shall require the submission of pertinent data to the Secretary, with respect to such fishery, as described in section 1853(a)(5) of this title; and

(4) may, to the extent necessary to prevent irreversible effects from overfishing, with respect to such fishery, contain conservation and management measures applicable to foreign fishing which—

(A) are determined to be necessary and appropriate for the conservation and management of such fishery,

(B) are consistent with the national standards, the other provisions of this chapter, and other applicable law, and

(C) are described in section 1853(b)(2), (3), (4), (5), and (7) of this title.

Each preliminary fishery management plan shall be in effect with respect to foreign fishing for which permits have been issued until a fishery management plan is prepared and implemented, pursuant to subchapter IV, with respect to such fishery. The Secretary may, in accordance with section 553 of title 5, also prepare and promulgate interim regulations with respect to any such preliminary plan. Such regulations shall be in effect until regulations implementing the applicable fishery management plan are promulgated pursuant to section 1855 of this title.

(h) Full observer coverage program

(1)(A) Except as provided in paragraph (2), the Secretary shall establish a program under which

a United States observer will be stationed aboard each foreign fishing vessel while that vessel is engaged in fishing within the exclusive economic zone.

(B) The Secretary shall by regulation prescribe minimum health and safety standards that shall be maintained aboard each foreign fishing vessel with regard to the facilities provided for the quartering of, and the carrying out of observer functions by, United States observers.

(2) The requirement in paragraph (1) that a United States observer be placed aboard each foreign fishing vessel may be waived by the Secretary if he finds that—

(A) in a situation where a fleet of harvesting vessels transfers its catch taken within the exclusive economic zone to another vessel, aboard which is a United States observer, the stationing of United States observers on only a portion of the harvesting vessel fleet will provide a representative sampling of the by-catch of the fleet that is sufficient for purposes of determining whether the requirements of the applicable management plans for the by-catch species are being complied with;

(B) in a situation where the foreign fishing vessel is operating under a Pacific Insular Area fishing agreement, the Governor of the applicable Pacific Insular Area, in consultation with the Western Pacific Council, has established an observer coverage program or other monitoring program that the Secretary, in consultation with the Western Pacific Management Council, determines is adequate to monitor harvest, bycatch, and compliance with the laws of the United States by vessels fishing under the agreement;

(C) the time during which a foreign fishing vessel will engage in fishing within the exclusive economic zone will be of such short duration that the placing of a United States observer aboard the vessel would be impractical; or

(D) for reasons beyond the control of the Secretary, an observer is not available.

(3) Observers, while stationed aboard foreign fishing vessels, shall carry out such scientific, compliance monitoring, and other functions as the Secretary deems necessary or appropriate to carry out the purposes of this chapter; and shall cooperate in carrying out such other scientific programs relating to the conservation and management of living resources as the Secretary deems appropriate.

(4) In addition to any fee imposed under section 1824(b)(10) of this title and section 1980(e) of title 22 with respect to foreign fishing for any year after 1980, the Secretary shall impose, with respect to each foreign fishing vessel for which a permit is issued under such section 1824 of this title, a surcharge in an amount sufficient to cover all the costs of providing a United States observer aboard that vessel. The failure to pay any surcharge imposed under this paragraph shall be treated by the Secretary as a failure to pay the permit fee for such vessel under section 1824(b)(10) of this title. All surcharges collected by the Secretary under this paragraph shall be deposited in the Foreign Fishing Observer Fund established by paragraph (5).

(5) 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 subsection. The Fund shall consist of the surcharges deposited into it as required under paragraph (4). All payments made by the Secretary to carry out this subsection 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 subsection shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(6) If at any time the requirement set forth in paragraph (1) cannot be met because of insufficient appropriations, the Secretary shall, in implementing a supplementary observer program:

(A) certify as observers, for the purposes of this subsection, individuals who are citizens or nationals of the United States and who have the requisite education or experience to carry out the functions referred to in paragraph (3);

(B) establish standards of conduct for certified observers equivalent to those applicable to Federal personnel;

(C) establish a reasonable schedule of fees that certified observers or their agents shall be paid by the owners and operators of foreign fishing vessels for observer services; and

(D) monitor the performance of observers to ensure that it meets the purposes of this chapter.

(i) Recreational fishing

Notwithstanding any other provision of this subchapter, foreign fishing vessels which are not operated for profit may engage in recreational fishing within the exclusive economic zone and the waters within the boundaries of a State subject to obtaining such permits, paying such reasonable fees, and complying with such conditions and restrictions as the Secretary and the Governor of the State (or his designee) shall impose as being necessary or appropriate to insure that the fishing activity of such foreign vessels within such zone or waters, respectively, is consistent with all applicable Federal and State laws and any applicable fishery management plan implemented under section 1854 of this title. The Secretary shall consult with the Secretary of State and the Secretary of the Department in which the Coast Guard is operating in formulating the conditions and restrictions to be applied by the Secretary under the authority of this subsection.

(Pub. L. 94-265, title II, § 201, Apr. 13, 1976, 90 Stat. 337; Pub. L. 95-354, § 4(1)-(4), Aug. 28, 1978, 92 Stat. 519, 520; Pub. L. 96-61, § 3(a), Aug. 15, 1979, 93 Stat. 407; Pub. L. 96-118, § 5, Nov. 16, 1979, 93 Stat. 860; Pub. L. 96-561, title II, §§ 230, 231(a), 236, Dec. 22, 1980, 94 Stat. 3296, 3297, 3299; Pub. L. 97-453, § 2(a), Jan. 12, 1983, 96 Stat. 2481; Pub. L. 98-623, title IV, § 404(1), (2), Nov. 8, 1984, 98 Stat. 3408; Pub. L. 99-386, title II, § 206(a), Aug. 22, 1986, 100 Stat. 823; Pub. L. 99-659, title I, §§ 101(c)(2), 103(a), Nov. 14, 1986, 100 Stat. 3707, 3708; Pub. L. 101-627, title I, § 104, Nov. 28, 1990, 104 Stat. 4439; Pub. L. 102-251, title III, § 301(d), Mar. 9, 1992, 106 Stat. 63; Pub. L. 103-236, title I, § 139(24), Apr. 30,

1994, 108 Stat. 399; Pub. L. 104-297, title I, § 105(a), Oct. 11, 1996, 110 Stat. 3563; Pub. L. 109-479, § 5, title IV, § 404(a), Jan. 12, 2007, 120 Stat. 3578, 3632.)

AMENDMENT OF SECTION

Pub. L. 102-251, title III, §§ 301(d), 308, Mar. 9, 1992, 106 Stat. 63, 66, provided that, effective on the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States, with authority to prescribe implementing regulations effective Mar. 9, 1992, but with no such regulation to be effective until the date on which the Agreement enters into force for the United States, this section is amended:

(1) in subsection (a), (A) by inserting “within the special areas,” immediately before “or for anadromous species” and (B) by striking “beyond the exclusive economic zone” and inserting in lieu thereof “beyond such zone or areas”;

(2) in subsection (e)(1)(E)(IV)[iv], by inserting “or special areas” immediately after “exclusive economic zone”;

(3) in subsection (i), (A) by inserting “or special areas” immediately before the period at the end of paragraph (1)(A), (B) by inserting “or special areas” immediately after “exclusive economic zone” in paragraph (2)(A), and (C) by inserting “or special areas” immediately after “exclusive economic zone” in paragraph (2)(B); and

(4) in subsection (j), (A) by inserting “, special areas,” immediately after “exclusive economic zone”, and (B) by inserting “, areas,” immediately after “such zone”.

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsecs. (c), (d), (e)(2)(C)(iii), (g), and (h)(3), (6)(D), was in the original “this Act”, meaning Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, known as the Magnuson-Stevens Fishery Conservation and Management Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

AMENDMENTS

2007—Subsec. (d). Pub. L. 109-479, § 5, substituted “is” for “shall be” and “cannot, or will not,” for “will not,” and inserted at end “Allocations of the total allowable level of foreign fishing are discretionary, except that the total allowable level shall be zero for fisheries determined by the Secretary to have adequate or excess domestic harvest capacity.”

Subsec. (h)(2)(B). Pub. L. 109-479, § 404(a), substituted “or other monitoring program that the Secretary, in consultation with the Western Pacific Management Council, determines is adequate to monitor harvest, bycatch, and compliance with the laws of the United States by vessels fishing under the agreement;” for “that is at least equal in effectiveness to the program established by the Secretary;”.

1996—Subsec. (a)(1), (2). Pub. L. 104-297, § 105(a)(1), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

“(1) is authorized under subsection (b) or (c) of this section;

“(2) is not prohibited by subsection (g) of this section; and”.

Subsec. (c)(2)(D). Pub. L. 104-297, § 105(a)(2), substituted “subsection (h)” for “subsection (i)”.

Subsec. (f). Pub. L. 104-297, § 105(a)(3), (4), repealed subsec. (f) and redesignated subsec. (g) as (f). See 1994 Amendment note below.

Subsec. (g). Pub. L. 104-297, § 105(a)(4), redesignated subsec. (h) as (g). Former subsec. (g) redesignated (f).

Subsec. (h). Pub. L. 104-297, § 105(a)(4), redesignated subsec. (i) as (h). Former subsec. (h) redesignated (g).

Subsec. (h)(2)(B) to (D). Pub. L. 104-297, § 105(a)(5), added subpar. (B) and redesignated former subpars. (B) and (C) as (C) and (D), respectively.

Subsec. (i). Pub. L. 104-297, § 105(a)(4), (6), redesignated subsec. (j) as (i) and substituted “section 1854” for “section 1855”. Former subsec. (i) redesignated (h).

Subsec. (j). Pub. L. 104-297, § 105(a)(4), redesignated subsec. (j) as (i).

1994—Subsec. (f). Pub. L. 103-236 directed the repeal of section 201(f) of the Fishery Conservation and Management Act, 1976, which was executed by repealing subsec. (f) of this section which was section 201(f) of the Magnuson Fishery Conservation and Management Act. Prior to repeal, subsec. (f) read as follows: “The Secretary and the Secretary of State shall prepare and submit a report to the Congress and the President, not later than July 1 of each year, setting forth—

“(1) a list of species of all allocations made to foreign nations pursuant to subsection (e) of this section and all permits issued pursuant to section 1824(b)(6)(B) of this title; and

“(2) all tariff and nontariff trade barriers imposed by such nations on the importation of such species from the United States.”

1990—Subsec. (d). Pub. L. 101-627 amended subsec. (d) generally, limiting the total allowable level of foreign fishing, with respect to any fishery subject to the exclusive management authority of the United States, to only that part of the potential fishery yield which is not harvested by United States fishermen and deleting the alternative method of determining the total allowable level of foreign fishing based on the annual fishing level for each harvesting season after the 1980 harvesting season.

1986—Subsecs. (a), (e)(1)(E)(iv). Pub. L. 99-659, § 101(c)(2), substituted “exclusive economic zone” for “fishery conservation zone” in two places.

Subsec. (f). Pub. L. 99-386 substituted “The Secretary and the Secretary of State shall” for “The Secretary of the Treasury, in cooperation with the Secretary and the Secretary of State, shall”.

Subsec. (i)(1). Pub. L. 99-659, §§ 101(c)(2), 103(a)(1), (2), designated existing provisions as subpar. (A), substituted “exclusive economic zone” for “fishery conservation zone”, and added subpar. (B).

Subsec. (i)(2)(A). Pub. L. 99-659, § 101(c)(2), substituted “exclusive economic zone” for “fishery conservation zone”.

Subsec. (i)(2)(B). Pub. L. 99-659, § 103(a)(3), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “with respect to any foreign fishing vessel while it is engaged in fishing within the fishery conservation zone—

“(i) the time during which the vessel engages in such fishing will be of such short duration that the placing of a United States observer aboard the vessel would be impractical, or

“(ii) the facilities of the vessel for the quartering of a United States observer, or for the carrying out of observer functions, are so inadequate or unsafe that the health or safety of an observer would be jeopardized; or”

Subsec. (j). Pub. L. 99-659, § 101(c)(2), substituted “exclusive economic zone” for “fishery conservation zone”.

1984—Subsec. (d)(4). Pub. L. 98-623, § 404(1), substituted “may allocate” for “shall allocate” in provisions preceding subpar. (A).

Subsec. (e)(1)(A). Pub. L. 98-623, § 404(2)(A), substituted “may make allocations to foreign nations from” for “shall determine the allocation among foreign nations of”.

Subsec. (e)(1)(E)(i). Pub. L. 98-623, § 404(2)(B), substituted “both United States fish and fishery products”

for “United States fish or fishery products” and inserted “, particularly fish and fishery products for which the foreign nation has requested an allocation”.

Subsec. (e)(1)(E)(ii). Pub. L. 98-623, §404(2)(C), amended provisions generally, thereby substituting “in both the advancement of existing and new opportunities for fisheries exports from the United States through the purchase of fishery products from United States processors, and the advancement of fisheries trade through the purchase of fish and fishery products from United States fishermen, particularly fish and fishery products for which the foreign nation has requested an allocation” for “in the advancement of existing and new opportunities for fisheries trade, particularly through the purchase of fish or fishery products from United States processors or from United States fishermen”.

1983—Subsec. (c)(2)(D). Pub. L. 97-453, §2(a)(1), amended par. (D) generally, substituting “United States observers required under subsection (i) be permitted to be stationed aboard any such vessel and that all of the costs incurred incident to such stationing, including the costs of data editing and entry and observer monitoring, be paid for, in accordance with such subsection, by the owner or operator of the vessel” for “duly authorized United States observers be permitted on board any such vessel and that the United States be reimbursed for the cost of such observers”.

Subsec. (c)(4)(D). Pub. L. 97-453, §2(a)(2), added subpar. (D).

Subsec. (d)(4). Pub. L. 97-453, §2(a)(3), substituted “may be allocated” for “shall be allocated” after “then such portion or part”.

Subsec. (e)(1). Pub. L. 97-453, §2(a)(4), designated first sentence of existing provisions as subpar. (A), added subpars. (B), (C), and (D), and redesignated former subpars. (A) through (H) as cls. (i) through (viii) of subpar. (E), respectively.

Subsec. (i)(3). Pub. L. 97-453, §2(a)(5)(A)(i), substituted provision that observers, while stationed aboard foreign fishing vessels, shall carry out such scientific, compliance monitoring, and other functions as the Secretary deems necessary or appropriate to carry out the purposes of this chapter and shall cooperate in carrying out such other scientific programs relating to the conservation and management of living resources as the Secretary deems appropriate, for provision that United States observers, while aboard foreign fishing vessels, were to carry out such scientific and other functions as the Secretary deemed necessary or appropriate to carry out the purposes of this chapter.

Subsec. (i)(6). Pub. L. 97-453, §2(a)(5)(A)(ii), added par. (6).

Subsec. (j). Pub. L. 97-453, §2(a)(6), added subsec. (j). 1980—Subsec. (d). Pub. L. 96-561, §230, designated existing provision as par. (2), substituted provision prescribing the total allowable level of foreign fishing with respect to any United States fishery for each harvesting season after the 1980 harvesting season as the level representing that portion of the optimum yield of such fishery that will not be harvested by vessels of the United States as determined in accordance with provisions of this chapter, other than those relating to the determination of annual fishing levels, or the annual fishing levels determined pursuant to par. (3) of this section for the harvesting season for provision prescribing the total allowable level of foreign fishing with respect to any fishery subject to the exclusive fishery management authority of the United States as that portion of the optimum yield of such fishery which will not be harvested by vessels of the United States, as determined in accordance with provisions of this chapter, and added pars. (1), (3), and (4).

Subsec. (e). Pub. L. 96-561, §231(a), substituted “All such determinations shall be made by the Secretary of State and the Secretary on the basis of” for “In making any such determination, the Secretary of State and the Secretary shall consider”, added subpars. (A), (B), (D), and (E), redesignated former subpars. (A), (B), and (D) as (F), (G), and (H), respectively, and in subpar. (C) substituted determination where such nations and the

fishery fleets of such nations have cooperated with the United States in enforcement of United States fishing regulations for determination where such nations have cooperated with the United States in enforcement and with respect to conservation and management of fishery resources.

Subsec. (i). Pub. L. 96-561, §236, added subsec. (i).

1979—Subsec. (e). Pub. L. 96-61 designated existing provisions as par. (1), redesignated pars. (1) through (4) as subpars. (A) to (D), and added par. (2).

Subsec. (e)(2)(D)(i). Pub. L. 96-118 substituted “unharvested” for “harvested”.

1978—Subsec. (a)(2). Pub. L. 95-354, §4(1), substituted “(g)” for “(f)”.

Subsec. (c)(3). Pub. L. 95-354, §4(2), substituted “harvest an amount of fish which exceeds” for “exceed”.

Subsecs. (f) to (h). Pub. L. 95-354, §4(3), (4), added subsec. (f), redesignated former subsecs. (f) and (g) as (g) and (h), and in subsec. (h)(1), as so redesignated, set out existing provisions as cls. (A) and (C) and added cl. (B).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-251 effective on date on which Agreement between United States and Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for United States, with authority to prescribe implementing regulations effective Mar. 9, 1992, but with no such regulation to be effective until date on which Agreement enters into force for United States, see section 308 of Pub. L. 102-251, set out as a note under section 773 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97-453, §2(b), Jan. 12, 1983, 96 Stat. 2483, provided that: “The amendments made by subsection (a)(1) and (5)(A)(ii) [amending this section] shall take effect January 1, 1984.”

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96-561, title II, §§231(b), 238(b), Dec. 22, 1980, 94 Stat. 3298, 3300, as amended by Pub. L. 104-208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to the 1981 harvesting season and harvesting seasons thereafter (as defined in section 201(d)(1) of the Magnuson-Stevens Fishery Conservation and Management Act, as amended by section 301) [subsec. (d)(1) of this section].”

Pub. L. 96-561, title II, §§237, 238(b), Dec. 22, 1980, 94 Stat. 3300, as amended by Pub. L. 104-208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that: “The amendment made by section 236 [amending this section] shall take effect October 1, 1981, and shall apply with respect to permits issued under section 204 of the Magnuson-Stevens Fishery Conservation and Management Act [section 1824 of this title] after December 31, 1981.”

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.

IMPLEMENTATION OF PACIFIC ALBACORE TUNA TREATY

Pub. L. 108-219, title IV, §401, Apr. 13, 2004, 118 Stat. 616, provided that:

“(a) IN GENERAL.—Notwithstanding anything to the contrary in section 201, 204, or 307(2) of the Magnuson-Stevens Fishery Conservation and Management Act (16

U.S.C. 1821, 1824, and 1857(2)), foreign fishing may be conducted pursuant to the Treaty between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges, signed at Washington May 26, 1981, including its Annexes and any amendments thereto.

“(b) REGULATIONS.—The Secretary of Commerce, with the concurrence of the Secretary of State, may—

“(1) promulgate regulations necessary to discharge the obligations of the United States under the Treaty and its Annexes; and

“(2) provide for the application of any such regulation to any person or vessel subject to the jurisdiction of the United States, wherever that person or vessel may be located.

“(c) ENFORCEMENT.—

“(1) IN GENERAL.—The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) shall be enforced as if subsection (a) were a provision of that Act. Any reference in the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) to ‘this Act’ or to any provision of that Act, shall be considered to be a reference to that Act as it would be in effect if subsection (a) were a provision of that Act.

“(2) REGULATIONS.—The regulations promulgated under subsection (b), shall be enforced as if—

“(A) subsection (a) were a provision of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.); and

“(B) the regulations were promulgated under that Act.”

FOREIGN FISHING FOR ATLANTIC HERRING AND MACKEREL

Pub. L. 104-43, title VIII, §802, Nov. 3, 1995, 109 Stat. 396, as amended by Pub. L. 104-208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that: “Notwithstanding any other provision of law—

“(1) no allocation may be made to any foreign nation or vessel under section 201 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) [16 U.S.C. 1821] in any fishery for which there is not a fishery management plan implemented in accordance with that Act [16 U.S.C. 1801 et seq.]; and

“(2) the Secretary of Commerce may not approve the portion of any permit application submitted under section 204(b) of the Act [16 U.S.C. 1824(b)] which proposes fishing by a foreign vessel for Atlantic mackerel or Atlantic herring unless—

“(A) the appropriate regional fishery management council recommends under section 204(b)(5) of that Act that the Secretary approve such fishing, and

“(B) the Secretary of Commerce includes in the permit any conditions or restrictions recommended by the appropriate regional fishery management council with respect to such fishing.”

USE OF VESSEL IDENTIFICATION EQUIPMENT

Pub. L. 100-629, §6, Nov. 7, 1988, 102 Stat. 3287, as amended by Pub. L. 104-208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that:

“(a) The Secretary of State, the Secretary of Commerce, and the Secretary of the department in which the Coast Guard is operating, as appropriate, shall exercise their authority under section 201(c)(2)(C) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1821) to require the use of transponders or other such appropriate position-fixing and identification equipment on any vessel other than a vessel of the United States engaged in fishing in the United States Exclusive Economic Zone.

“(b) The Secretary of Commerce, after consultation with the Secretary of Defense, the Secretary of State, and the Secretary of the department in which the Coast

Guard is operating shall report to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science and Transportation of the Senate within 180 days after the date of enactment of this Act [Nov. 7, 1988] on the results of their compliance with subsection (a).”

§ 1822. International fishery agreements

(a) Negotiations

The Secretary of State—

(1) shall renegotiate treaties as provided for in subsection (b);

(2) shall negotiate governing international fishery agreements described in section 1821(c) of this title;

(3) may negotiate boundary agreements as provided for in subsection (d);

(4) shall, upon the request of and in cooperation with the Secretary, initiate and conduct negotiations for the purpose of entering into international fishery agreements—

(A) which allow fishing vessels of the United States equitable access to fish over which foreign nations assert exclusive fishery management authority, and

(B) which provide for the conservation and management of anadromous species and highly migratory species; and

(5) may enter into such other negotiations, not prohibited by subsection (c), as may be necessary and appropriate to further the purposes, policy, and provisions of this chapter.

(b) Treaty renegotiation

The Secretary of State, in cooperation with the Secretary, shall initiate, promptly after April 13, 1976, the renegotiation of any treaty which pertains to fishing within the exclusive economic zone (or within the area that will constitute such zone after February 28, 1977), or for anadromous species or Continental Shelf fishery resources beyond such zone or area, and which is in any manner inconsistent with the purposes, policy, or provisions of this chapter, in order to conform such treaty to such purposes, policy, and provisions. It is the sense of Congress that the United States shall withdraw from any such treaty, in accordance with its provisions, if such treaty is not so renegotiated within a reasonable period of time after April 13, 1976.

(c) International fishery agreements

No international fishery agreement (other than a treaty) which pertains to foreign fishing within the exclusive economic zone (or within the area that will constitute such zone after February 28, 1977), or for anadromous species or Continental Shelf fishery resources beyond such zone or area—

(1) which is in effect on June 1, 1976, may thereafter be renewed, extended, or amended; or

(2) may be entered into after May 31, 1976;

by the United States unless it is in accordance with the provisions of section 1821(c) of this title or section 1824(e) of this title.

(d) Boundary negotiations

The Secretary of State, in cooperation with the Secretary, may initiate and conduct negotiations with any adjacent or opposite foreign