

by surcharges under section 1821(i)(4) of this title, during each fiscal year, the same ratio as the aggregate quantity of fish harvested by foreign fishing vessels within the fishery conservation zone during the preceding year bears to the aggregate quantity of fish harvested by both foreign and domestic fishing vessels within such zone and the territorial waters of the United States during such preceding year and that the fees collected for permits issued after 1981 be transferred to the fisheries loan fund for provision directing that fees be formulated so as to ensure that receipts resulting from payments for fees issued for 1981 are not less than an amount equal to 7 percent of the ex vessel value of the total harvest by foreign fishing vessels in the fishery conservation zone during 1979 and that the fees collected for permits issued for 1981 be transferred to the fisheries loan fund.

Pub. L. 96-561, §232(a), substituted provision directing that fees be formulated so as to ensure that receipts resulting from payments for fees issued for 1981 are not less than an amount equal to 7 percent of the ex vessel value of the total harvest by foreign fishing vessels in the fishery conservation zone during 1979 and that the fees collected for permits issued for 1981 be transferred to the fisheries loan fund for provision permitting the Secretary, in determining the level of fees, to take into account the cost of carrying out the provisions of this chapter with respect to foreign fishing, including, but not limited to, the cost of fishery conservation and management, fisheries research, administration, and enforcement.

1978—Subsec. (b)(3)(D) to (F). Pub. L. 95-354, §4(5), in subpar. (D) substituted provisions relating to estimation of amount of tonnage which will be caught, taken, or harvested, for provisions relating to the amount of fish or tonnage of catch contemplated for each vessel, added subpar. (E), and redesignated former subpar. (E) as (F).

Subsec. (b)(4). Pub. L. 95-354, §4(6), substituted provisions relating to publication of the notice of receipt of the application in the Federal Register, for provisions relating to publication of the application in the Federal Register.

Subsec. (b)(6). Pub. L. 95-354, §4(7), redesignated existing provisions as subpar. (A) inserted reference to subpar. (B), and added subpar. (B).

Subsec. (b)(7)(D) to (F). Pub. L. 95-354, §4(8), added subpars. (D) and (E) and redesignated former subpar. (D) as (F).

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 1980 AMENDMENT

Pub. L. 96-561, title II, §232(a), Dec. 22, 1980, 94 Stat. 3298, provided that the amendment made by that section is effective with respect to permits issued under subsec. (b) of this section for 1981.

Pub. L. 96-561, title II, §232(b), Dec. 22, 1980, 94 Stat. 3298, provided that the amendment made by that section is effective with respect to permits issued under subsec. (b) of this section after 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.

§ 1825. Import prohibitions

(a) Determinations by Secretary of State

If the Secretary of State determines that—

(1) he has been unable, within a reasonable period of time, to conclude with any foreign nation an international fishery agreement allowing fishing vessels of the United States equitable access to fisheries over which that nation asserts exclusive fishery management authority, including fisheries for tuna species, as recognized by the United States, in accordance with fishing activities of such vessels, if any, and under terms not more restrictive than those established under sections 1821(c) and (d) and 1824(b)(7) and (10) of this title, because such nation has (A) refused to commence negotiations, or (B) failed to negotiate in good faith;

(2) any foreign nation is not allowing fishing vessels of the United States to engage in fishing for tuna species in accordance with an applicable international fishery agreement, whether or not such nation is a party thereto;

(3) any foreign nation is not complying with its obligations under any existing international fishery agreement concerning fishing by fishing vessels of the United States in any fishery over which that nation asserts exclusive fishery management authority; or

(4) any fishing vessel of the United States, while fishing in waters beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States, is seized by any foreign nation—

(A) in violation of an applicable international fishery agreement;

(B) without authorization under an agreement between the United States and such nation; or

(C) as a consequence of a claim of jurisdiction which is not recognized by the United States;

he shall certify such determination to the Secretary of the Treasury.

(b) Prohibitions

Upon receipt of any certification from the Secretary of State under subsection (a), the Secretary of the Treasury shall immediately take such action as may be necessary and appropriate to prohibit the importation into the United States—

(1) of all fish and fish products from the fishery involved, if any; and

(2) upon recommendation of the Secretary of State, such other fish or fish products, from any fishery of the foreign nation concerned, which the Secretary of State finds to be appropriate to carry out the purposes of this section.

(c) Removal of prohibition

If the Secretary of State finds that the reasons for the imposition of any import prohibition under this section no longer prevail, the Secretary of State shall notify the Secretary of the

Treasury, who shall promptly remove such import prohibition.

(d) Definitions

As used in this section—

(1) The term “fish” includes any highly migratory species.

(2) The term “fish products” means any article which is produced from or composed of (in whole or in part) any fish.

(Pub. L. 94-265, title II, §205, Apr. 13, 1976, 90 Stat. 345; Pub. L. 101-627, title I, §105(b)(1), Nov. 28, 1990, 104 Stat. 4440.)

Editorial Notes

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101-627, §105(b)(1)(A), inserted “including fisheries for tuna species,” after “authority,” and struck out “traditional” after “in accordance with”.

Subsec. (a)(2). Pub. L. 101-627, §105(b)(1)(B), substituted “tuna” for “highly migratory”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-627, title I, §105(b)(2), Nov. 28, 1990, 104 Stat. 4440, provided that: “The amendments made by this subsection [amending this section] shall take effect on January 1, 1992.”

§ 1826. Large-scale driftnet fishing

(a) Short title

This section incorporates and expands upon provisions of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 and may be cited as the “Driftnet Act Amendments of 1990”.

(b) Findings

The Congress finds that—

(1) the continued widespread use of large-scale driftnets beyond the exclusive economic zone of any nation is a destructive fishing practice that poses a threat to living marine resources of the world’s oceans, including but not limited to the North and South Pacific Ocean and the Bering Sea;

(2) the use of large-scale driftnets is expanding into new regions of the world’s oceans, including the Atlantic Ocean and Caribbean Sea;

(3) there is a pressing need for detailed and reliable information on the number of seabirds, sea turtles, nontarget fish, and marine mammals that become entangled and die in actively fished large-scale driftnets and in large-scale driftnets that are lost, abandoned, or discarded;

(4) increased efforts, including reliable observer data and enforcement mechanisms, are needed to monitor, assess, control, and reduce the adverse impact of large-scale driftnet fishing on living marine resources;

(5) the nations of the world have agreed in the United Nations, through General Assembly Resolution Numbered 44-225, approved December 22, 1989, by the General Assembly, that a moratorium should be imposed by June 30, 1992, on the use of large-scale driftnets beyond the exclusive economic zone of any nation;

(6) the nations of the South Pacific have agreed to a moratorium on the use of large-

scale driftnets in the South Pacific through the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, which was agreed to in Wellington, New Zealand, on November 29, 1989;

(7) increasing population pressures and new knowledge of the importance of living marine resources to the health of the global ecosystem demand that greater responsibility be exercised by persons fishing or developing new fisheries beyond the exclusive economic zone of any nation; and

(8) within the exclusive economic zone, large-scale driftnet fishing that deploys nets with large mesh sizes causes significant entanglement and mortality of living marine resources, including myriad protected species, despite limitations on the lengths of such nets.

(c) Policy

It is declared to be the policy of the Congress in this section that the United States should—

(1) implement the moratorium called for by the United Nations General Assembly in Resolution Numbered 44-225;

(2) support the Tarawa Declaration and the Wellington Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific;

(3) secure a permanent ban on the use of destructive fishing practices, and in particular large-scale driftnets, by persons or vessels fishing beyond the exclusive economic zone of any nation; and

(4) prioritize the phase out of large-scale driftnet fishing in the exclusive economic zone and promote the development and adoption of alternative fishing methods and gear types that minimize the incidental catch of living marine resources.

(d) International agreements

The Secretary, through the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall seek to secure international agreements to implement immediately the findings, policy, and provisions of this section, and in particular an international ban on large-scale driftnet fishing. The Secretary, through the Secretary of State, shall include, in any agreement which addresses the taking of living marine resources of the United States, provisions to ensure that—

(1) each large-scale driftnet fishing vessel of a foreign nation that is party to the agreement, including vessels that may operate independently to develop new fishing areas, which operate beyond the exclusive economic zone of any nation, is included in such agreement;

(2) each large-scale driftnet fishing vessel of a foreign nation that is party to the agreement, which operates beyond the exclusive economic zone of any nation, is equipped with satellite transmitters which provide real-time position information accessible to the United States;

(3) statistically reliable monitoring by the United States is carried out, through the use of on-board observers or through dedicated platforms provided by foreign nations that are parties to the agreement, of all target and