

HIGH SEAS DRIFTNET FISHERIES ENFORCEMENT ACT

[Public Law 102–582, Approved Nov. 2, 1992, 106 Stat. 4900]

[Amended through Public Law 109–479, Enacted January 12, 2007]

AN ACT To enhance the effectiveness of the United Nations international driftnet fishery conservation program.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. [16 U.S.C. 1801 note] SHORT TITLE.

This Act may be cited as the “High Seas Driftnet Fisheries Enforcement Act”.

SEC. 2. [16 U.S.C. 1826a note] FINDINGS AND POLICY.

(a) FINDINGS.—Congress makes the following findings:

(1) Large-scale driftnet fishing on the high seas is highly destructive to the living marine resources and ocean ecosystems of the world’s oceans, including anadromous fish and other living marine resources of the United States.

(2) The cumulative effects of large-scale driftnet fishing pose a significant threat to the marine ecosystem, and slow-reproducing species like marine mammals, sharks, and seabirds may require many years to recover.

(3) Members of the international community have reviewed the best available scientific data on the impacts of large-scale pelagic driftnet fishing, and have failed to conclude that this practice has no significant adverse impacts which threaten the conservation and sustainable management of living marine resources.

(4) The United Nations, via General Assembly Resolutions numbered 44–225, 45–197, and most recently 46–215 (adopted on December 20, 1991), has called for a worldwide moratorium on all high seas driftnet fishing by December 31, 1992, in all the world’s oceans, including enclosed seas and semi-enclosed seas.

(5) The United Nations has commended the unilateral, regional, and international efforts undertaken by members of the international community and international organizations to implement and support the objectives of the General Assembly resolutions.

(6) Operative paragraph (4) of United Nations General Assembly Resolution numbered 46–215 specifically “encourages all members of the international community to take measures individually and collectively to prevent large-scale pelagic driftnet fishing operations on the high seas of the world’s oceans and seas”.

(7) The United States, in section 307(1)(M) of the Magnuson Fishery Conservation and Management Act¹ (16 U.S.C. 1857(1)(M)), has specifically prohibited the practice of large-scale driftnet fishing by United States nationals and vessels both within the exclusive economic zone of the United States and beyond the exclusive economic zone of any nation.

(8) The Senate, through Senate Resolution 396 of the One Hundredth Congress (approved on March 18, 1988), has called for a moratorium on fishing in the Central Bering Sea and the United States has taken concrete steps to implement such moratorium through international negotiations.

(9) Despite the continued evidence of a decline in the fishery resources of the Bering Sea and the multiyear cooperative negotiations undertaken by the United States, the Russian Federation, Japan, and other concerned fishing nations, some nations refuse to agree to measures to reduce or eliminate unregulated fishing practices in the waters of the Bering Sea beyond the exclusive economic zones of the United States and the Russian Federation.

(10) In order to ensure that the global moratorium on large-scale driftnet fishing called for in United Nations General Assembly Resolution numbered 46–215 takes effect by December 31, 1992, and that unregulated fishing practices in the waters of the Central Bering Sea are reduced or eliminated, the United States should take the actions described in this Act and encourage other nations to take similar action.

(b) POLICY.—It is the stated policy of the United States to—

(1) implement United Nations General Assembly Resolution numbered 46–215, approved unanimously on December 20, 1991, which calls for an immediate cessation to further expansion of large-scale driftnet fishing, a 50 percent reduction in existing large-scale driftnet fishing effort by June 30, 1992, and a global moratorium on the use of large-scale driftnets beyond the exclusive economic zone of any nation by December 31, 1992;

(2) bring about a moratorium on fishing in the Central Bering Sea, or an international conservation and management agreement to which the United States and the Russian Federation are parties that regulates fishing in the Central Bering Sea; and

(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.

¹So in law. Section 211 of the Department of Commerce and Related Agencies Appropriations Act, 1997 (as contained in section 101(a), title I of Division A of Public Law 104–208; 110 Stat. 3009–41) provides:

SEC. 211. (a) Effective 15 days after the enactment of the Sustainable Fisheries Act, section 1 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801) shall be amended to read as follows: “That this Act may be cited as the ‘Magnuson-Stevens Fishery Conservation and Management Act.’”

(b) Effective 15 days after the enactment of the Sustainable Fisheries Act, all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.

Since such section did not actually amend each occurrence of the short title in law, the former short title appears here.

TITLE I—HIGH SEAS LARGE-SCALE DRIFTNET FISHING

SEC. 101. [16 U.S.C. 1826a] DENIAL OF PORT PRIVILEGES AND SANCTIONS FOR HIGH SEAS LARGE-SCALE DRIFTNET FISHING.

(a) DENIAL OF PORT PRIVILEGES.—

(1) PUBLICATION OF LIST.—Not later than 30 days after the date of enactment of this Act and periodically thereafter, the Secretary of Commerce, in consultation with the Secretary of State, shall publish a list of nations whose nationals or vessels conduct large-scale driftnet fishing beyond the exclusive economic zone of any nation.

(2) DENIAL OF PORT PRIVILEGES.—The Secretary of the Treasury shall, in accordance with recognized principles of international law—

(A) withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States (46 App. U.S.C. 91) for any large-scale driftnet fishing vessel that is documented under the laws of the United States or of a nation included on a list published under paragraph (1); and

(B) deny entry of that vessel to any place in the United States and to the navigable waters of the United States.

(3) NOTIFICATION OF NATION.—Before the publication of a list of nations under paragraph (1), the Secretary of State shall notify each nation included on that list regarding—

(A) the effect of that publication on port privileges of vessels of that nation under paragraph (1); and

(B) any sanctions or requirements, under this Act or any other law, that may be imposed on that nation if nationals or vessels of that nation continue to conduct large-scale driftnet fishing beyond the exclusive economic zone of any nation after December 31, 1992.

(b) SANCTIONS.—

(1) IDENTIFICATIONS.—

(A) INITIAL IDENTIFICATIONS.—Not later than January 10, 1993, the Secretary of Commerce shall—

(i) identify each nation whose nationals or vessels are conducting large-scale driftnet fishing or illegal, unreported, or unregulated fishing beyond the exclusive economic zone of any nation; and

(ii) notify the President and that nation of the identification under clause (i).

(B) ADDITIONAL IDENTIFICATIONS.—At any time after January 10, 1993, whenever the Secretary of Commerce has reason to believe that the nationals or vessels of any nation are conducting large-scale driftnet fishing or illegal, unreported, or unregulated fishing beyond the exclusive economic zone of any nation, the Secretary of Commerce shall—

(i) identify that nation; and

(ii) notify the President and that nation of the identification under clause (i).

(2) CONSULTATIONS.—Not later than 30 days after a nation is identified under paragraph (1)(B), the President shall enter into consultations with the government of that nation for the purpose of obtaining an agreement that will effect the immediate termination of large-scale driftnet fishing or illegal, unreported, or unregulated fishing by the nationals or vessels of that nation beyond the exclusive economic zone of any nation.

(3) PROHIBITION ON IMPORTS OF FISH AND FISH PRODUCTS AND SPORT FISHING EQUIPMENT.—

(A) PROHIBITION.—The President—

(i) upon receipt of notification of the identification of a nation under paragraph (1)(A); or

(ii) if the consultations with the government of a nation under paragraph (2) are not satisfactorily concluded within ninety days,¹ shall direct the Secretary of the Treasury to prohibit the importation into the United States of fish and fish products and sport fishing equipment (as that term is defined in section 4162 of the Internal Revenue Code of 1986 (26 U.S.C. 4162)) from that nation.

(B) IMPLEMENTATION OF PROHIBITION.—With respect to an import prohibition directed under subparagraph (A), the Secretary of the Treasury shall implement such prohibition not later than the date that is forty-five days after the date on which the Secretary has received the direction from the President.

(C) PUBLIC NOTICE OF PROHIBITION.—Before the effective date of any import prohibition under this paragraph, the Secretary of the Treasury shall provide public notice of the impending prohibition.

(4) ADDITIONAL ECONOMIC SANCTIONS.—

(A) DETERMINATION OF EFFECTIVENESS OF SANCTIONS.—Not later than six months after the date the Secretary of Commerce identifies a nation under paragraph (1), the Secretary shall determine whether—

(i) any prohibition established under paragraph (3) is insufficient to cause that nation to terminate large-scale driftnet fishing or illegal, unreported, or unregulated fishing conducted by its nationals and vessels beyond the exclusive economic zone of any nation; or

(ii) that nation has retaliated against the United States as a result of that prohibition.

(B) CERTIFICATION.—The Secretary of Commerce shall certify to the President each affirmative determination under subparagraph (A) with respect to a nation.

(C) EFFECT OF CERTIFICATION.—Certification by the Secretary of Commerce under subparagraph (B) is deemed to be a certification under section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)), as amended by this Act.

¹So in law. The margin beginning with the text "shall direct the Secretary" through the end of this clause probably should be moved 2 ems to left so as to appear flush on the margin for subparagraph (A).

SEC. 102. [16 U.S.C. 1826b] DURATION OF DENIAL OF PORT PRIVILEGES AND SANCTIONS.

Any denial of port privileges or sanction under section 101 with respect to a nation shall remain in effect until such time as the Secretary of Commerce certifies to the President and the Congress that such nation has terminated large-scale driftnet fishing or illegal, unreported,¹ or unregulated fishing by its nationals and vessels beyond the exclusive economic zone of any nation.

SEC. 103. REQUIREMENTS UNDER MARINE MAMMAL PROTECTION ACT OF 1972.

【Amends section 101(a)(2) of the Marine Mammal Protection Act of 1972】

SEC. 104. [16 U.S.C. 1826c] DEFINITIONS.

In this title, the following definitions apply:

(1) **FISH AND FISH PRODUCTS.**—The term “fish and fish products” means any aquatic species (including marine mammals and plants) and all products thereof exported from a nation, whether or not taken by fishing vessels of that nation or packed, processed, or otherwise prepared for export in that nation or within the jurisdiction thereof.

(2) **LARGE-SCALE DRIFTNET FISHING.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), the term “large-scale driftnet fishing” means a method of fishing in which a gillnet composed of a panel or panels of webbing, or a series of such gillnets, with a total length of two and one-half kilometers or more is placed in the water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.

(B) **EXCEPTION.**—Until January 1, 1994, the term “large-scale driftnet fishing” does not include the use in the northeast Atlantic Ocean of gillnets with a total length not to exceed five kilometers if the use is in accordance with regulations adopted by the European Community pursuant to the October 28, 1991, decision by the Council of Fisheries Ministers of the Community.

(3) **LARGE-SCALE DRIFTNET FISHING VESSEL.**—The term “large-scale driftnet fishing vessel” means any vessel which is—

(A) used for, equipped to be used for, or of a type which is normally used for large-scale driftnet fishing; or

(B) used for aiding or assisting one or more vessels at sea in the performance of large-scale driftnet fishing, including preparation, supply, storage, refrigeration, transportation, or processing.

TITLE II—FISHERIES CONSERVATION PROGRAMS**SEC. 201. IMPORT RESTRICTIONS UNDER FISHERMEN'S PROTECTIVE ACT OF 1967.**

【Amends section 8 of the Fishermen's Protective Act of 1967.】

¹The space after the word “unreported” probably should not appear. See amendment made by section 403(b)(2) of Public Law 109–479.

SEC. 202. [16 U.S.C. 1861 note] ENFORCEMENT.

(a) IN GENERAL.—Not later than six months after the date of the enactment of this Act, the Secretary of the department in which the Coast Guard is operating, the Secretary of Commerce, and the Secretary of Defense shall enter into an agreement under section 311(a) of the Magnuson Fishery Conservation and Management Act¹ (16 U.S.C. 1861(a)) in order to make more effective the enforcement of domestic laws and international agreements that conserve and manage the living marine resources of the United States.

(b) TERMS.—The agreement entered into under subsection (a) shall include—

(1) procedures for identifying and providing the location of vessels that are in violation of domestic laws or international agreements to conserve and manage the living marine resources of the United States;

(2) requirements for the use of the surveillance capabilities of the Department of Defense; and

(3) procedures for communicating vessel locations to the Secretary of Commerce and the Coast Guard.

SEC. 203. TRADE NEGOTIATIONS AND THE ENVIRONMENT.

It is the sense of the Congress that the President, in carrying out multilateral, bilateral, and regional trade negotiations, should seek to—

(1) address environmental issues related to the negotiations;

(2) modify articles of the General Agreement on Tariffs and Trade (referred to in this section as “GATT”) to take into consideration the national environmental laws of the GATT Contracting Parties and international environmental treaties;

(3) secure a working party on trade and the environment within GATT as soon as possible;

(4) take an active role in developing trade policies that make GATT more responsive to national and international environmental concerns;

(5) include Federal agencies with environmental expertise during the negotiations to determine the impact of the proposed trade agreements on national environmental law; and

(6) periodically consult with interested parties concerning the progress of the negotiations.

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TITLE III—FISHERIES ENFORCEMENT IN CENTRAL BERING SEA**SEC. 301. [16 U.S.C. 1823 note] SHORT TITLE.**

This title may be cited as the “Central Bering Sea Fisheries Enforcement Act of 1992”.

¹ See footnote to section 2(a)(7).

SEC. 302. [16 U.S.C. 1823 note] PROHIBITION APPLICABLE TO UNITED STATES VESSELS AND NATIONALS.

(a) PROHIBITION.—Vessels and nationals of the United States are prohibited from conducting fishing operations in the Central Bering Sea and the Central Sea of Okhotsk, except where such fishing operations are conducted in accordance with an international fishery agreement to which the United States and the Russian Federation are parties.

(b) CIVIL PENALTIES AND PERMIT SANCTIONS.—A violation of this section shall be subject to civil penalties and permit sanctions under section 308 of the Magnuson Fishery Conservation and Management Act¹ (16 U.S.C. 1858).

SEC. 303. [16 U.S.C. 1823 note] PORT PRIVILEGES DENIAL FOR FISHING IN CENTRAL BERING SEA.

(a) DENIAL OF PORT PRIVILEGES.—The Secretary of the Treasury shall, after December 31, 1992, in accordance with recognized principles of international law—

(1) withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States (46 App. U.S.C. 91) for any fishing vessel documented under the laws of a nation that is included on a list published under subsection (b); and

(2) deny entry of such fishing vessel to any place in the United States and to the navigable waters of the United States.

(b) PUBLICATION OF LIST.—Not later than forty-five days after the date of enactment of this Act, the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall publish in the Federal Register a list of nations whose nationals or vessels conduct fishing operations in the Central Bering Sea, except where such fishing operations are in accordance with an international fishery agreement to which the United States and the Russian Federation are parties. The Secretary shall publish as an addendum to the list the name of each vessel documented under the laws of each listed nation which conducts fishing operations in the Central Bering Sea. A revised list shall be published whenever the list is no longer accurate, except that a nation may not be removed from the list unless—

(1) the nationals and vessels of that nation have not conducted fishing operations in the Central Bering Sea for the previous ninety days and the nation has committed, through a bilateral agreement with the United States or in any other

¹So in law. Section 211 of the Department of Commerce and Related Agencies Appropriations Act, 1997 (as contained in section 101(a), title I of Division A of Public Law 104–208; 110 Stat. 3009–41) provides:

SEC. 211. (a) Effective 15 days after the enactment of the Sustainable Fisheries Act, section 1 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801) shall be amended to read as follows: “That this Act may be cited as the ‘Magnuson-Stevens Fishery Conservation and Management Act.’”

(b) Effective 15 days after the enactment of the Sustainable Fisheries Act, all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.

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manner acceptable to the Secretary of Commerce, not to permit its nationals or vessels to resume such fishing operations; or

(2) the nationals and vessels of that nation are conducting fishing operations in the Central Bering Sea that are in accordance with an international fishery agreement to which the United States and the Russian Federation are parties.

(c) NOTIFICATION OF NATION.—Before the publication of a list of nations under subsection (b), the Secretary of State shall notify each nation included on that list and explain the requirement to deny the port privileges of fishing vessels of that nation under subsection (a) as a result of such publication.

SEC. 304. [16 U.S.C. 1823 note] DURATION OF PORT PRIVILEGES DENIAL.

Any denial of port privileges under section 303 with respect to any fishing vessel of a nation shall remain in effect until such nation is no longer listed under section 303(b).

SEC. 305. [16 U.S.C. 1823 note] RESTRICTION ON FISHING IN UNITED STATES EXCLUSIVE ECONOMIC ZONE.

(a) REGULATIONS.—Within one hundred and eighty days after the date of enactment of this Act, after notice and public comment, the Secretary of Commerce shall issue regulations, under the Magnuson Fishery Conservation and Management Act¹ (16 U.S.C. 1801 et seq.) and any other applicable law, to prohibit—

(1) any permitted fishing vessel from catching, taking, or harvesting fish in a fishery under the geographical authority of the North Pacific Fishery Management Council if such vessel is owned or controlled by any person that also owns or controls a fishing vessel that is listed on the addendum under section 303(b);

(2) any processing facility from receiving any fish caught, taken, or harvested in a fishery under the geographical authority of the North Pacific Fishery Management Council if such facility is owned or controlled by any person that also owns or controls a fishing vessel that is listed on the addendum under section 303(b); and

(3) any permitted fishing vessel from delivering fish caught, taken, or harvested in a fishery under the geographic authority of the North Pacific Fishery Management Council to a processing facility that is owned or controlled by any person that also owns or controls a fishing vessel that is listed on the addendum under section 303(b).

(b) REQUIREMENT FOR SUBMISSION OF DOCUMENTS.—The Secretary of Commerce shall require under any regulations issued under subsection (a) the submission of any affidavits, financial statements, corporate agreements, and other documents that the Secretary of Commerce determines, after notice and public comment, are necessary to ensure that all vessels and processing facilities are in compliance with this section.

(c) APPEALS; DURATION OF PROHIBITIONS.—The regulations issued under subsection (a) shall—

¹ See footnote to section 302(b).

(1) establish procedures for a person to appeal a decision to impose a prohibition under subsection (a) on a vessel or processing facility owned or controlled by that person; and

(2) specify procedures for the removal of any prohibition imposed on a vessel or processing facility under subsection (a)—

(A) upon publication of a revised list under section 303(b), and a revised addendum which does not include a fishing vessel owned or controlled by the person who also owns or controls the vessel or facility to which the prohibition applies; or

(B) on the date that is ninety days after such person terminates ownership and control in fishing vessels that are listed on the addendum under section 303(b).

SEC. 306. [16 U.S.C. 1823 note] DEFINITIONS.

In this title, the following definitions apply:

(1) **CENTRAL BERING SEA.**—The term “Central Bering Sea” means the central Bering Sea area which is more than two hundred nautical miles seaward of the baselines from which the breadth of the territorial seas of the United States and the Russian Federation are measured.

(2) **CENTRAL SEA OF OKHOTSK.**—The term “Central Sea of Okhotsk” means the Central Sea of Okhotsk area which is more than two hundred nautical miles seaward of the baseline from which the breadth of the territorial sea of the Russian Federation is measured.

(3) **FISHING VESSEL.**—The term “fishing vessel” means any vessel which is used for—

(A) catching, taking, or harvesting fish; or

(B) aiding or assisting one or more vessels at sea in the performance of fishing operations, including preparation, supply, storage, refrigeration, transportation, or processing.

(4) **OWNS OR CONTROLS.**—When used in reference to a vessel or processing facility—

(A) the term “owns” means holding legal title to the vessel or processing facility; and

(B) the term “controls” includes an absolute right to direct the business of the person owning the vessel or processing facility, to limit the actions of or replace the chief executive officer (by whatever title), a majority of the board of directors, or any general partner (as applicable) of such person, to direct the transfer or operations of the vessel or processing facility, or otherwise to exercise authority over the business of such person, but the term does not include the right simply to participate in those activities of such person or the right to receive a financial return, such as interest or the equivalent of interest, on a loan or other financing obligation.

(5) **PERMITTED FISHING VESSEL.**—The term “permitted fishing vessel” means any fishing vessel that is subject to a permit issued by the Secretary of Commerce under the Magnuson

Fishery Conservation and Management Act¹ (16 U.S.C. 1801 et seq.).

(6) PERSON.—The term “person” means any individual (whether or not a citizen of the United States), any corporation, partnership, association, cooperative, or other entity (whether or not organized under the laws of any State), and any State, local, or foreign government, or any entity of such government or the Federal Government.

(7) PROCESSING FACILITY.—The term “processing facility” means any fish processing establishment or fish processing vessel that receives unprocessed fish.

SEC. 307. [16 U.S.C. 1823 note] TERMINATION.

This title shall cease to have force and effect after the date that is seven years after the date of enactment of this Act, except that any proceeding with respect to violations of section 302 occurring prior to such termination date shall be conducted as if that section were still in effect.

¹ See footnote to section 302(b).