

109-479

SEC. 610.¹⁴ EQUIVALENT CONSERVATION MEASURES.

16 USC 1826k.

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

- (1) fishing vessels of that nation are engaged, or have been engaged during the preceding calendar year in fishing activities or practices;
 - (A) in waters beyond any national jurisdiction that result in bycatch of a protected living marine resource; or
 - (B) beyond the exclusive economic zone of the United States that result in bycatch of a protected living marine resource shared by the United States;
- (2) 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
- (3) 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.

(b) CONSULTATION AND NEGOTIATION.—The Secretary, acting through the Secretary of State, shall—

- (1) notify, as soon as possible, other nations whose vessels engage in fishing activities or practices described in subsection (a), about the provisions of this section and this Act;
- (2) initiate discussions as soon as possible with all foreign governments which are engaged in, or which have persons or companies engaged in, fishing activities or practices described in subsection (a), for the purpose of entering into bilateral and multilateral treaties with such countries to protect such species;
- (3) seek agreements calling for international restrictions on fishing activities or practices described in subsection (a) through the United Nations, the Food and Agriculture Organization's Committee on Fisheries, and appropriate international fishery management bodies; and

¹⁴ The High Seas Driftnet Fishing Moratorium Protection Act (P.L. 104-43) is codified as 16 U.S.C. 1826d-k. The section number refers to P.L. 109-479.

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(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) 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 shall establish a procedure for certification, on a shipment-by-shipment, shipper-by-shipper, or other basis of fish or fish products from a vessel of a harvesting nation not certified under paragraph (3) 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 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) 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) that has not been certified by the Secretary under this subsection, or 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.

(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);

(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); 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.

16 U.S.C. 1826d note
HSDFMFA § 602

P.L. 104-43, sec. 602
FINDINGS.

16 USC 1826d note.

The Congress finds that—

(1) Congress has enacted and the President has signed into law numerous Acts to control or prohibit large-scale driftnet fishing both within the jurisdiction of the United States and beyond the exclusive economic zone of any nation, including the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 (title IV, Public Law 100-220), the Driftnet Act Amendments of 1990 (Public Law 101-627), and the High Seas Driftnet Fisheries Enforcement Act (title I, Public Law 102-582);

(2) the United States is a party to the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, also known as the Wellington Convention;

(3) the General Assembly of the United Nations has adopted three resolutions and three decisions which established and reaffirm a global moratorium on large-scale driftnet fishing on the high seas, beginning with Resolution 44/225 in 1989 and most recently in Decision 48/445 in 1993;

(4) the General Assembly of the United Nations adopted these resolutions and decisions at the request of the United States and other concerned nations;

(5) the best scientific information demonstrates the wastefulness and potentially destructive impacts of large-scale driftnet fishing on living marine resources and seabirds; and

(6) Resolution 46/215 of the United Nations General Assembly calls on all nations, both individually and collectively, to prevent large-scale driftnet fishing on the high seas.