

“(b) APPLICATION.—During the period when the Agreement is in force and effect with respect to the United States—

“(1) vessels and nationals of Canada may fish within the fishery conservation zone, or for anadromous species and Continental Shelf fishery resources beyond such zone, but only pursuant to, and in accordance with, the provisions of the Agreement; and

“(2) title II of the Magnuson Fishery Conservation and Management Act [this subchapter] (relating to foreign fishing and international fishery agreements) and section 307 of such Act [section 1857 of this title] (relating to prohibited acts) shall not apply with respect to fishing within the fishery conservation zone, or for anadromous species and Continental Shelf fishery resources beyond such zone, by vessels and nationals of Canada which is pursuant to, and in accordance with the provisions of the Agreement.

“(c) FISHING STATISTICS.—(1) Any person who—

“(A) owns or operates any fishing vessel which—

“(i) is a vessel of the United States, and

“(ii) engages in fishing to which the Agreement applies; or

“(B) directly or indirectly receives, or may receive, fish to which the Agreement applies in the course of a commercial activity in quantities determined by the Secretary to be sufficient to assist in the carrying out of this paragraph,

shall submit to the Secretary such statistics (including, but not limited to, catch data) regarding such fishing or such receipt of fish as are necessary to fulfill the obligations of the United States under article XIII of the Agreement. The Secretary, after consultation with the Secretary of State, shall issue such regulations as are necessary and appropriate to carry out the purposes of this paragraph. Section 303(d) of the Magnuson Fishery Conservation and Management Act [section 1853(d) of this title] (relating to the confidentiality of statistics) shall apply with respect to all statistics submitted under this paragraph.

“(2) Any violation of paragraph (1), or of any regulation issued pursuant to paragraph (1), by any person shall be deemed to be an act prohibited by section 307 of the Magnuson Fishery Conservation and Management Act [section 1857 of this title]. Any person who commits any such violation shall be liable to the United States for a civil penalty as provided for in section 308 of such Act [section 1858 of this title]. Sections 309 [section 1859 of this title] (relating to criminal offenses) and 310 [section 1860 of this title] (relating to civil forfeiture) of such Act shall not apply with respect to any such violation.

“(d) DEFINITIONS.—As used in this section, the terms ‘anadromous species’, ‘Continental Shelf fishery resources’, ‘fishery conservation zone’, ‘fishing’, ‘fishing vessel’, ‘Secretary’, and ‘vessel of the United States’ shall have the same respective meanings as are given to such terms in section 3 of the Magnuson Fishery Conservation and Management Act [section 1802 of this title].”

Amendment by Pub. L. 96-561, title II, §238(b), Dec. 22 1980, 94 Stat. 3300, effective 15 days after Dec. 22, 1980, see section 238 of Pub. L. 96-561, set out as a Short Title note under section 1801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1821, 1857 of this title.

§ 1824. Permits for foreign fishing

(a) In general

After February 28, 1977, no foreign fishing vessel shall engage in fishing within the exclusive economic zone, or for anadromous species or Continental Shelf fishery resources beyond such zone, unless such vessel has on board a valid permit issued under this section for such vessel.

(b) Applications and permits under governing international fishery agreements

(1) Eligibility; duration

Each foreign nation with which the United States has entered into a governing international fishery agreement shall submit an application to the Secretary of State each year for a permit for each of its fishing vessels that wishes to engage in fishing described in subsection (a) of this section. No permit issued under this section may be valid for longer than a year; and section 558(c) of title 5 does not apply to the renewal of any such permit.

(2) Forms

The Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall prescribe the forms for permit applications submitted under this subsection and for permits issued pursuant to any such application.

(3) Contents

Any application made under this subsection shall specify—

(A) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof;

(B) the tonnage, hold capacity, speed, processing equipment, type and quantity of fishing gear, and such other pertinent information with respect to characteristics of each such vessel as the Secretary may require;

(C) each fishery in which each such vessel wishes to fish;

(D) the estimated amount of tonnage of fish which will be caught, taken, or harvested in each such fishery by each such vessel during the time the permit is in force;

(E) the amount or tonnage of United States harvested fish, if any, which each such vessel proposes to receive at sea from vessels of the United States;

(F) the ocean area in which, and the season or period during which, such fishing will be conducted; and

(G) all applicable vessel safety standards imposed by the foreign country, and shall include written certification that the vessel is in compliance with those standards;

and shall include any other pertinent information and material which the Secretary may require.

(4) Transmittal for action

Upon receipt of any application which complies with the requirements of paragraph (3), the Secretary of State shall publish a notice of receipt of the application in the Federal Register. Any such notice shall summarize the contents of the applications from each nation included therein with respect to the matters described in paragraph (3). The Secretary of State shall promptly transmit—

(A) such application, together with his comments and recommendations thereon, to the Secretary;

(B) a copy of the application to the Secretary of the department in which the Coast Guard is operating; and

(C) a copy or a summary of the application to the appropriate Council.

(5) Action by Council

After receiving a copy or summary of an application under paragraph (4)(C), the Council may prepare and submit to the Secretary such written comments on the application as it deems appropriate. Such comments shall be submitted within 45 days after the date on which the application is received by the Council and may include recommendations with respect to approval of the application and, if approval is recommended, with respect to appropriate conditions and restrictions thereon. Any interested person may submit comments to such Council with respect to any such application. The Council shall consider any such comments in formulating its submission to the Secretary.

(6) Approval

(A) After receipt of any application transmitted under paragraph (4)(A), the Secretary shall consult with the Secretary of State and, with respect to enforcement, with the Secretary of the department in which the Coast Guard is operating. The Secretary, after taking into consideration the views and recommendations of such Secretaries, and any comments submitted by any Council under paragraph (5), may approve, subject to subparagraph (B), the application, if he determines that the fishing described in the application will meet the requirements of this chapter, or he may disapprove all or any portion of the application.

(B)(i) In the case of any application which specifies that one or more foreign fishing vessels propose to receive at sea United States harvested fish from vessels of the United States, the Secretary may approve the application unless the Secretary determines, on the basis of the views, recommendations, and comments referred to in subparagraph (A) and other pertinent information, that United States fish processors have adequate capacity, and will utilize such capacity, to process all United States harvested fish from the fishery concerned.

(ii) The amount or tonnage of United States harvested fish which may be received at sea during any year by foreign fishing vessels under permits approved under this paragraph may not exceed that portion of the optimum yield of the fishery concerned which will not be utilized by United States fish processors.

(iii) In deciding whether to approve any application under this subparagraph, the Secretary may take into account, with respect to the foreign nation concerned, such other matters as the Secretary deems appropriate.

(7) Establishment of conditions and restrictions

The Secretary shall establish conditions and restrictions which shall be included in each permit issued pursuant to any application approved under paragraph (6) and which must be complied with by the owner or operator of the fishing vessel for which the permit is issued. Such conditions and restrictions shall include the following:

(A) All of the requirements of any applicable fishery management plan, or preliminary fishery management plan, and the regulations promulgated to implement any such plan.

(B) The requirement that no permit may be used by any vessel other than the fishing vessel for which it is issued.

(C) The requirements described in section 1821(c)(1), (2), and (3) of this title.

(D) If the permit is issued other than pursuant to an application approved under paragraph (6)(B), the restriction that the foreign fishing vessel may not receive at sea United States harvested fish from vessels of the United States.

(E) If the permit is issued pursuant to an application approved under paragraph (6)(B), the maximum amount or tonnage of United States harvested fish which may be received at sea from vessels of the United States.

(F) Any other condition and restriction related to fishery conservation and management which the Secretary prescribes as necessary and appropriate.

(8) Notice of approval

The Secretary shall promptly transmit a copy of each application approved under paragraph (6) and the conditions and restrictions established under paragraph (7) to—

(A) the Secretary of State for transmittal to the foreign nation involved;

(B) the Secretary of the department in which the Coast Guard is operating; and

(C) any Council which has authority over any fishery specified in such application.

(9) Disapproval of applications

If the Secretary does not approve any application submitted by a foreign nation under this subsection, he shall promptly inform the Secretary of State of the disapproval and his reasons therefore. The Secretary of State shall notify such foreign nation of the disapproval and the reasons therefor. Such foreign nation, after taking into consideration the reasons for disapproval, may submit a revised application under this subsection.

(10) Fees

(A) Fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit has been issued pursuant to this section. The Secretary, in consultation with the Secretary of State, shall establish a schedule of reasonable fees that shall apply nondiscriminatorily to each foreign nation.

(B) Amounts collected by the Secretary under this paragraph shall be deposited in the general fund of the Treasury.

(11) Issuance of permits

If a foreign nation notifies the Secretary of State of its acceptance of the conditions and restrictions established by the Secretary under paragraph (7), the Secretary of State shall promptly transmit such notification to the Secretary. Upon payment of the applicable fees established pursuant to paragraph (10), the Secretary shall thereupon issue to such

foreign nation, through the Secretary of State, permits for the appropriate fishing vessels of that nation. Each permit shall contain a statement of all conditions and restrictions established under paragraph (7) which apply to the fishing vessel for which the permit is issued.

(c) Registration permits

The Secretary of State, in cooperation with the Secretary, shall issue annually a registration permit for each fishing vessel of a foreign nation which is a party to an international fishery agreement under which foreign fishing is authorized by section 1821(b) of this title and which wishes to engage in fishing described in subsection (a) of this section. Each such permit shall set forth the terms and conditions contained in the agreement that apply with respect to such fishing, and shall include the additional requirement that the owner or operator of the fishing vessel for which the permit is issued shall prominently display such permit in the wheelhouse of such vessel and show it, upon request, to any officer authorized to enforce the provisions of this chapter (as provided for in section 1861 of this title). The Secretary of State, after consultation with the Secretary and the Secretary of the department in which the Coast Guard is operating, shall prescribe the form and manner in which applications for registration permits may be made, and the forms of such permits. The Secretary of State may establish, require the payment of, and collect fees for registration permits; except that the level of such fees shall not exceed the administrative costs incurred by him in issuing such permits.

(Pub. L. 94-265, title II, §204, Apr. 13, 1976, 90 Stat. 342; Pub. L. 95-354, §4(5)-(8), Aug. 28, 1978, 92 Stat. 520, 521; Pub. L. 96-470, title I, §111(b), title II, §208, Oct. 19, 1980, 94 Stat. 2239, 2245; Pub. L. 96-561, title II, §232, Dec. 22, 1980, 94 Stat. 3298; Pub. L. 97-453, §3, Jan. 12, 1983, 96 Stat. 2483; Pub. L. 99-272, title VI, §6021, Apr. 7, 1986, 100 Stat. 123; Pub. L. 99-659, title I, §§101(c)(2), 102, 103(b), Nov. 14, 1986, 100 Stat. 3707, 3709; Pub. L. 101-627, title I, §§106, 120(b), Nov. 28, 1990, 104 Stat. 4440, 4459; Pub. L. 102-251, title III, §301(f), Mar. 9, 1992, 106 Stat. 64.)

AMENDMENT OF SUBSECTION (a)

Pub. L. 102-251, title III, §§ 301(f), 308, Mar. 9, 1992, 106 Stat. 64, 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, subsection (a) is amended by inserting "within the special areas," before "or for anadromous species" and "or areas" after "such zone".

AMENDMENTS

1990—Subsec. (b)(4)(C). Pub. L. 101-627, §120(b), substituted "Council" for "council".

Subsec. (b)(10). Pub. L. 101-627, §106(a), amended par. (10) generally. Prior to amendment, par. (10) consisted

of subpars. (A) to (F) relating to schedule of fees to be paid for permits for foreign fishing vessels, ratios for determining minimum fees, review and notice to Congress of performance by nations receiving allocations, factors included and excluded in cost of carrying out this chapter, use of amounts collected in fees, and deposit into general fund of United States Treasury of a determined amount.

Subsec. (b)(12). Pub. L. 101-627, §106(b), struck out par. (12) which related to sanctions for violation of section 1857 of this title or for failure to pay civil penalty under section 1858 of this title or criminal fine under section 1859 of this title. See section 1858(g) of this title.

1986—Subsec. (a). Pub. L. 99-659, §101(c)(2), substituted "exclusive economic zone" for "fishery conservation zone".

Subsec. (b)(1). Pub. L. 99-659, §102(1), inserted provision that no permit issued under this section may be valid for longer than a year, with section 558(c) of title 5 inapplicable to the renewal of any such permit.

Subsec. (b)(3)(G). Pub. L. 99-659, §103(b), added subpar. (G).

Subsec. (b)(4)(C). Pub. L. 99-659, §102(2), struck out " upon its request" before period at end.

Subsec. (b)(6)(A). Pub. L. 99-659, §102(3), inserted " , or he may disapprove all or any portion of the application".

Subsec. (b)(10). Pub. L. 99-272 amended par. (10) generally. Prior to amendment, par. (10) read as follows: "Fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit is issued pursuant to this subsection. The Secretary, in consultation with the Secretary of State, shall establish a schedule of such fees which shall apply nondiscriminatorily to each foreign nation. The fees imposed under this paragraph shall be at least in an amount sufficient to return to the United States an amount which bears to the total cost of carrying out the provisions of this chapter (including, but not limited to, fishery conservation and management, fisheries research, administration, and enforcement, but excluding costs for observers covered 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. The amount collected by the Secretary under this paragraph shall be transferred to the fisheries loan fund established under section 742c of this title for so long as such fund exists and used of the purpose of making loans therefrom, but only to the extent and in amounts provided for in advance in appropriation Acts."

Subsec. (b)(10)(B), (C). Pub. L. 99-659, §101(c)(2), substituted "exclusive economic zone" for "fishery conservation zone".

Subsec. (b)(12). Pub. L. 99-659, §102(4), amended par. (12) generally. Prior to amendment, par. (12) read as follows: "If any foreign fishing vessel for which a permit has been issued pursuant to this subsection has been used in the commission of any act prohibited by section 1857 of this title the Secretary may, or if any civil penalty imposed under section 1858 of this title or any criminal fine imposed under section 1859 of this title has not been paid and is overdue the Secretary shall—

"(A) revoke such permit, with or without prejudice to the right of the foreign nation involved to obtain a permit for such vessel in any subsequent year;

"(B) suspend such permit for the period of time deemed appropriate; or

"(C) impose additional conditions and restrictions on the approved application of the foreign nation involved and on any permit issued under such application.

Any permit which is suspended under this paragraph for nonpayment of a civil penalty shall be reinstated by

the Secretary upon the payment of such civil penalty together with interest thereon at the prevailing rate.”

1983—Subsec. (b)(3)(B). Pub. L. 97-453, §3(1), inserted “hold” before “capacity”.

Subsec. (b)(4). Pub. L. 97-453, §3(2), struck out “and shall be set forth under the name of each Council to which it will be transmitted for comment” after “in paragraph (3)”.

Subsec. (b)(4)(B). Pub. L. 97-453, §3(3), struck out “to each appropriate Council and” after “application”.

Subsec. (b)(4)(C). Pub. L. 97-453, §3(3), substituted “a copy or a summary of the application to the appropriate council, upon its request” for “a monthly summary of foreign fishing applications including a report on approved applications as described in paragraphs (6) and (7) to the Committee on Merchant Marine and Fisheries of the House of Representatives and to the Committees on Commerce and Foreign Relations of the Senate”.

Subsec. (b)(5). Pub. L. 97-453, §3(4), substituted “After receiving a copy or summary of an application under paragraph (4)(C), the Council may” for “After receipt of an application transmitted under paragraph (4)(B), each appropriate Council shall”.

1980—Subsec. (b)(4)(C). Pub. L. 96-470, §208, substituted “a monthly summary of foreign fishing applications including a report on approval applications as described in paragraph (6) and (7)” for “a copy of such material”.

Subsec. (b)(8)(D). Pub. L. 96-470, §111(b), struck out subpar. (D) which required the Secretary to promptly transmit a copy of each application to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committees on Commerce and Foreign Relations of the Senate.

Subsec. (b)(10). Pub. L. 96-561, §232(b), substituted provision directing that fees imposed under this paragraph be at least in an amount sufficient to return to the United States an amount which bears to the total cost of carrying out the provisions of this chapter, including, but not limited to, fishery conservation and management, fisheries research, administration, and enforcement, but excluding costs for observers covered 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).

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

Section 232(a) of Pub. L. 96-561 provided that the amendment made by that section is effective with respect to permits issued under subsec. (b) of this section for 1981.

Section 232(b) of Pub. L. 96-561 provided that the amendment made by that section is effective with respect to permits issued under subsec. (b) of this section after 1981.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1371, 1383a, 1387, 1821, 1825, 1852, 1857 of this title; title 22 section 1980.

§ 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