

Int'l. Fishing and Related Activities

§ 300.205

fish harvesting plans for the conservation and sustainable management of sharks.

(e) *Procedures to certify nations identified as having fishing vessels engaged in fishing activities or practices that target or incidentally catch sharks.* Each nation that is identified as having fishing vessels engaged in fishing activities or practices in waters beyond any national jurisdiction that target or incidentally catch sharks and has not adopted a regulatory program for the conservation of sharks, including measures to prohibit removal of any of the fins of a shark (including the tail) and discard the carcass of the shark at sea, that is comparable to that of the United States, taking into account different conditions, shall receive either a positive or a negative certification from the Secretary of Commerce. This certification will be published in the biennial report to Congress. The Secretary of Commerce shall issue a positive certification to an identified nation upon making a determination that:

(1) Such nation has provided evidence documenting its adoption of a regulatory program for the conservation of sharks that is comparable in effectiveness to regulatory measures required under U.S. law in the relevant fisheries, taking into account different conditions, including conditions that could bear on the feasibility and effectiveness of measures; and such nation has established a management plan that will assist in the collection of species-specific data on sharks to support international stock assessments and conservation efforts for sharks.

(2) Prior to a formal certification determination, nations will be provided with preliminary certification determinations, and an opportunity to support and/or refute the preliminary determinations, and communicate actions taken to adopt a regulatory program that is comparable in effectiveness to that of the United States, taking into account different conditions. The Secretary of Commerce shall consider any relevant information received during consultations when making its formal certification determination.

[78 FR 3343, Jan. 16, 2013]

§ 300.205 Effect of certification.

(a) If a nation identified under § 300.202(a), § 300.203(a), or § 300.204(a) does not receive a positive certification under this subpart (*i.e.*, the nation receives a negative certification or no certification is made), the Secretary of Treasury shall, in accordance with recognized principles of international law:

(1) Withhold or revoke the clearance required by section 91 of the Appendix to Title 46 for the fishing vessels of such nation; and

(2) Deny entry to the fishing vessels of such nation to any place in the United States and to the navigable waters of the United States.

(b) Upon notification and any recommendations by the Secretary of Commerce to the President that an identified nation has failed to receive a positive certification, the President is authorized to direct the Secretary of the Treasury to prohibit the importation of certain fish and fish products from such nation (see § 300.206).

(c) Any action recommended under paragraph (b) of this section shall be consistent with international obligations, including the WTO Agreement.

(d) If certain fish and fish products are prohibited from entering the United States, within six months after the imposition of the prohibition, the Secretary of Commerce shall determine whether the prohibition is insufficient to cause that nation to effectively address the IUU fishing, bycatch, or shark catch described in the biennial report, or that nation has retaliated against the United States as a result of that prohibition. The Secretary of Commerce shall certify to the President each affirmative determination that an import prohibition is insufficient to cause a nation to effectively address such IUU fishing activity, bycatch, or shark catch or that a nation has taken retaliatory action against the United States. This certification is deemed to be a certification under section 1978(a) of Title 22, which provides that the President may direct the Secretary of the Treasury to prohibit the bringing or the importation into the United States of any products from the offending country for any duration as the President determines appropriate and to the extent that such

prohibition is sanctioned by the World Trade Organization.

(e) *Duration of certification.* Any nation identified in the biennial report to Congress for having vessels engaged in IUU fishing that is negatively certified will remain negatively certified until the Secretary of Commerce determines that the nation has taken appropriate corrective action to address the IUU fishing activities for which it was identified in the biennial report. Any nation identified in the biennial report to Congress for having vessels engaged in PLMR bycatch or catch of sharks that is negatively certified will remain negatively certified until the Secretary of Commerce determines that the nation has taken the necessary actions pursuant to the Moratorium Protection Act to receive a positive certification.

(f) *Consultations.* NMFS will, working through or in consultation with the Department of State, continue consultations with nations that do not receive a positive certification with respect to the fishing activities described in the biennial report to Congress. The Secretary of Commerce shall take the results of such consultations into consideration when making a subsequent certification determination for each such nation.

[78 FR 3344, Jan. 16, 2013]

§ 300.206 Denial of port privileges and import restrictions on fish or fish products.

(a) *Scope of Applicability* (1) Vessels from a nation identified in the biennial report under § 300.202(a), § 300.203(a), or § 300.204(a) and not positively certified by the Secretary of Commerce that enter any place in the United States or the navigable waters of the United States remain subject to inspection and may be prohibited from landing, processing, or transshipping fish and fish products, under applicable law. Services, including the refueling and re-supplying of such fishing vessels, may be prohibited, with the exception of services essential to the safety, health, and welfare of the crew. Fishing vessels will not be denied port access or services in cases of force majeure or distress.

(2) For nations identified in the previous biennial report under § 300.202(a)

that are not positively certified in the current biennial report, the Secretary of Commerce shall so notify and make recommendations to the President, who is authorized to direct the Secretary of Treasury to impose import prohibitions with respect to fish and fish products from those nations. Such a recommendation would address the relevant fishing activities or practices for which such nations were identified in the biennial report. Such import prohibitions, if implemented, would apply to fish and fish products managed under an applicable international fishery agreement. If there is no applicable international fishery agreement, such prohibitions, if implemented, would only apply to fish and fish products caught by vessels engaged in illegal, unreported, or unregulated fishing. For nations identified under § 300.203(a) or § 300.204(a) that are not positively certified, the Secretary of Commerce shall so notify and make recommendations to the President, who is authorized to direct the Secretary of Treasury to impose import prohibitions with respect to fish and fish products from those nations; such prohibitions would only apply to fish and fish products caught by the vessels engaged in the relevant activity for which the nation was identified.

(3) Any action recommended under paragraph (a)(2) shall be consistent with international obligations, including the WTO Agreement.

(b) *Imposition of import restrictions*—(1) *Notification.* Where the Secretary of Commerce cannot make positive certifications for identified nations, and the President determines that certain fish and fish products from such nations are ineligible for entry into the United States and U.S. territories, the Secretary of Commerce, in cooperation with the Secretaries of Treasury, Homeland Security, and State, will file a notice with the Office of the Federal Register.

(2) *Certification of admissibility.* If certain fish or fish products are subject to import prohibitions, NMFS may publish in the FEDERAL REGISTER the requirement that, in addition to any other import documentation requirements that otherwise apply, other fish