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SENATE

{ REPORT
111-124 }

THE SHARK CONSERVATION ACT OF 2009

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 850



FEBRUARY 4, 2010.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

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THE SHARK CONSERVATION ACT OF 2009

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Mr. ROCKEFELLER, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 850]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 850) to amend the High Seas Driftnet Fishing Moratorium Protection Act and the Magnuson-Stevens Fishery Conservation and Management Act to improve the conservation of sharks, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

S. 850, the Shark Conservation Act of 2009, would clarify the intended scope of application of the Shark Finning Prohibition Act of 2000. It would also equip Federal fisheries enforcement authorities with new tools to better detect and deter the unlawful practice of finning sharks.

BACKGROUND AND NEEDS

There are well over 400 known species of sharks whose habitats may be found throughout the world's oceans and seas. Although many of these species dominate their natural habitats as apex predators or mesopredators, they are also prone to higher mortality rates due to their slow growth, late age of maturity, and low fecundity. This higher mortality has been compounded in recent decades by increased human exploitation of the oceans' living marine resources, most notably through incidental taking of sharks as bycatch in pelagic longline fisheries from the 1960s onward, and the targeting of sharks in directed fisheries, which expanded rapidly in

the 1980s and continues to the present day.¹ The impact on shark populations is staggering—for example, a 2003 scientific analysis of shark populations in the Northwest Atlantic included an estimate that all recorded shark species there, with the exception of mako sharks, had declined by more than 50 percent in the prior eight to fifteen years.² This trend is not limited to the Northwest Atlantic. Similar declines have been detected in other oceans and seas throughout the world.³ This trend is particularly troubling when considered in the context of the broader, indirect effects resulting from their removal. The impacts of eliminating apex predators can be far-reaching, and can include the release of mesopredator prey populations from predatory control and the induction of subsequent cascades of indirect trophic interactions.⁴ In response to these very real concerns about dwindling shark populations, the United States has taken a leadership role in recent years in the implementation of conservation measures.

Under the Magnuson-Stevens Fishery Conservation and Management Act (“MSA”),⁵ as amended by the Shark Finning Prohibition Act of 2000,⁶ it is unlawful to: (1) remove the fins of sharks and discard their carcasses; (2) have custody, control, or possession of any such fin aboard a fishing vessel without the corresponding carcass; or (3) land any such fin without the corresponding carcass.⁷ There is a rebuttable presumption that a violation of these prohibitions has occurred if the total weight of shark fins found aboard a fishing vessel or landed is greater than five percent of the total weight of shark carcasses found aboard the vessel or landed.⁸ The MSA defines the term “fishing vessel” broadly to include not only vessels used for fishing, but also vessels used to assist other vessels at sea in the performance of any activity related to fishing.⁹ Such fishing-related activities include, but are not limited to, “. . . preparation, supply, storage, refrigeration, *transportation*, or processing.”¹⁰

Despite the broad range of vessels to which the shark finning and other provisions of the MSA are meant to apply, the United States Court of Appeals for the 9th Circuit held in March, 2008, that the shark finning prohibitions and related implementing regulations promulgated by the National Marine Fisheries Service (“NMFS”) do not apply to certain vessels even though they are performing fishing-related activities.¹¹ In that 9th Circuit case, the government brought a civil forfeiture action against a cargo of

¹ Julia K. Baum et al., *Collapse and Conservation of Shark Populations in the Northwest Atlantic*, SCIENCE, Jan. 17, 2003, at 389 (citing R. Bonfil, *Overview of World Elasmobranch Fisheries*, FAO FISHERIES TECHNICAL PAPER 341 (Rome, 1994); and D. Rose, *An Overview of World Trade in Sharks and Other Large Cartilaginous Fishes*, TRAFFIC NETWORK (Cambridge, UK, 1996).

² *Id.*

³ See, e.g., Ransom A. Myers and Boris Worm, *Rapid Worldwide Depletion of Predatory Fish Communities*, NATURE, May 25, 2003; Francesco Ferretti, *Loss of Large Predatory Sharks from the Mediterranean Sea*, 22 CONSERVATION BIOLOGY 4, 952-964 (2008); and Travis D. Shepherd and Ransom A. Myers, *Direct and Indirect Fishery Effects on Small Coastal Elasmobranchs in the Northern Gulf of Mexico*, ECOLOGY LETTERS, 1095-1104 (2005).

⁴ Ransom A. Myers et al., *Cascading Effects of the Loss of Apex Predatory Sharks from a Coastal Ocean*, SCIENCE, Mar. 30, 2007, at 1846.

⁵ 16 U.S.C. § 1801 et seq.

⁶ Pub. L. 106-557, 114 Stat. 2772.

⁷ 16 U.S.C. § 1857(1)(P).

⁸ *Id.* § 1857(1).

⁹ *Id.* § 1802(18).

¹⁰ *Id.* § 1802(18)(B) (emphasis added).

¹¹ See *United States v. Approx. 64,695 Pounds of Shark Fins*, 520 F.3d 976 (9th Cir. 2008).

shark fins seized from a United States vessel operating under a Registry endorsement (and, before that, under a Fishery endorsement), allowing it to engage in foreign trade. The vessel had been chartered by a Hong Kong seafood products company to rendezvous with foreign fishing vessels on the high seas, purchase shark fins from those vessels, and transport the shark fins to Guatemala where the Hong Kong company planned to accept delivery. Applying the law to the facts of the case, the court determined that the statutory definition of “fishing vessel” did not offer fair notice to the chartering company that the vessel’s activities (i.e., engaging in the at-sea purchase and transfer of shark fins) would render it a “fishing vessel” subject to the shark finning laws. As a result, the court held that applying the shark finning prohibitions to the vessel and its charterer violated due process.¹²

The Committee is aware of the economic concerns that a fins-attached requirement may raise in certain States and United States territories where fisheries have developed in accordance with cultural norms that value the entire shark as a food fish, and separating fin from shark has been a normal step in the practice of pre-processing the shark for higher value at the time of commercial sale. Since these Pacific fisheries present special challenges for legislation aimed at prohibiting the abusive practice of finning sharks and discarding the carcasses, the Committee urges the Secretary, in consultation with the appropriate regional fishery management councils, to determine whether additional regulations are warranted to make allowance for regional and cultural differences in the shark fisheries. The Committee recognizes that fishing opportunities in the Pacific, especially in Guam and the Northern Marianas Islands, are being increasingly restricted through the designation of the Marianas Trench National Marine Monument and the pending military build-up in Guam. While it is important for the United States to remain an international leader in conservation, part of that leadership role means understanding regional variations in fishing practices, the cultural dimensions of demand for ocean products, and the relative health of the ecosystems that support fisheries.

These economic concerns are not limited to the Pacific. Similar concerns have been raised regarding commercial smooth dogfish fisheries along the mid-Atlantic coast of the United States. The Committee understands that, although this commercial fishing activity generally occurs less than five miles offshore, the fisheries catch is harvested in nearly equal amounts from State waters and the Federal Exclusive Economic Zone. The Committee recognizes that this commercial fishing activity is unique among shark fishing operations, and does not involve “shark finning” as that term is defined under current law. Unlike large coastal sharks, whose fins account for 80 percent or more of their value, it is the flesh, not the fins, of smooth dogfish which accounts for 75 percent or more of their value (when the flesh is of a high quality). Moreover, while the fins of many sharks can carry a value of hundreds of dollars per pound, smooth dogfish fins are typically valued at less than \$2 per pound. The Committee is informed that, because the flesh of smooth dogfish is especially prone to spoilage, the fish must be par-

¹² *Id.* at 983.

tially processed at sea before returning to shore in order to ensure a high quality product. This practice involves the removal of the fins as well as other parts of the fish. The Committee urges the Secretary, in consultation with the appropriate regional fishery management councils and the Atlantic States Marine Fisheries Commission, to determine appropriate allowances under the provisions of S. 850 to avoid undue burdens on commercial smooth dogfish fishing.

SUMMARY OF PROVISIONS

S. 850 would clarify that the shark finning prohibitions of the Magnuson-Stevens Act apply not only to fishing vessels, but also to non-fishing vessels involved in transferring or receiving shark fins at sea. The bill would also strengthen Federal fisheries enforcement capabilities related to shark finning in two important ways. First, it would require that sharks caught in Federal waters or under a Federal fishing permit must be taken and landed with all fins at least partially attached to their corresponding carcasses. Second, it would amend the High Seas Driftnet Fishing Moratorium Protection Act, 16 U.S.C. 1826(d)-(k), to provide the United States with the ability to take action against countries that catch sharks if those countries lack comparable shark conservation laws.

LEGISLATIVE HISTORY

S. 850 was introduced on April 22, 2009, by Senator Kerry and was referred to the Committee on Commerce, Science, and Transportation. A budget and oversight hearing on National Oceanic and Atmospheric Administration (NOAA) issues, including fish conservation and management issues, was held by the Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard on June 11, 2009. As a part of that hearing, questions were asked for the record regarding the Administration's views on the need for additional shark conservation legislation and on the provisions of S. 850. On November 19, 2009, the Committee met in open executive session and by voice vote ordered that S. 850 be reported with an amendment in the nature of a substitute.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

DECEMBER 1, 2009.

Hon. JOHN D. ROCKEFELLER IV,
Chairman, Committee on Commerce, Science and Transportation,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 850, the Shark Conservation Act of 2009.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jeff LaFave.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 850—Shark Conservation Act of 2009

Summary: S. 850 would prohibit certain activities that may involve shark finning (the practice of removing a shark’s fins and discarding its carcass). The bill also would direct the National Oceanic and Atmospheric Administration (NOAA) to identify foreign nations that do not sufficiently regulate fishing practices that harm sharks.

Based on information from NOAA and assuming appropriation of the necessary amounts, CBO estimates that implementing S. 850 would cost \$5 million over the 2010–2014 period. Enacting the legislation would not affect revenues or direct spending.

S. 850 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

S. 850 would impose private-sector mandates, as defined in UMRA, by requiring that shark fins aboard fishing vessels, transferred or received at sea, or landed at a U.S. port be naturally attached to the carcass. CBO estimates that the cost of complying with the mandates would fall well below the annual threshold established in UMRA for private-sector mandates (\$139 million in 2009, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 850 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					
	2010	2011	2012	2013	2014	2010–2014
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	1	1	1	1	1	5
Estimated Outlays	1	1	1	1	1	5

Basis of estimate: For this estimate, CBO assumes that S. 850 will be enacted early in calendar year 2010 and that the necessary amounts will be appropriated for each fiscal year.

S. 850 would amend the Magnuson-Stevens Fishery Conservation and Management Act to prohibit fishing vessels from possessing shark fins that are not naturally attached to a carcass. The bill also would require NOAA to identify any nation that permits fishing vessels to catch sharks without also having adopted a conservation program for sharks that is similar to that of the United States. Based on information from NOAA, CBO estimates that the agency would need \$1 million for each of fiscal years 2010 through 2014 to expand existing reports on fishing practices, to enforce new prohibitions on possessing shark fins, and to help foreign nations improve their shark conservation efforts.

Estimated impact on state, local, and tribal governments: S. 850 contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimated impact on the private sector: S. 850 would impose private-sector mandates as defined in UMRA. The bill would make it unlawful to possess shark fins aboard fishing vessels, to transfer or receive shark fins at sea, or to land shark fins at a U.S. port with-

out the fin naturally attached to the carcass. CBO estimates that the cost to comply with the mandates would fall well below the annual threshold established in UMRA for private-sector mandates (\$139 million in 2009, adjusted annually for inflation).

Current law prohibits the possession of a shark fin on a fishing vessel and the landing of a shark fin at a U.S. port without the corresponding carcass. By requiring fins to be naturally attached to the shark, the bill would impose an additional mandate on owners and operators of those vessels. Because the National Marine Fisheries Service has issued a final rule with the same requirement for sharks harvested in the Atlantic Ocean, the mandate would apply only to vessels in the Pacific Ocean. If the requirement for Pacific sharks is implemented in a manner similar to the rule for Atlantic sharks, leaving fins attached by a flap of skin would be considered naturally attached and would comply with the mandate. Compared with leaving the fins completely attached, that process would provide for easier storage aboard the vessel and removal of the fin once landed. CBO expects that the mandate in the bill would be enforced in this manner and thus would not impose significant additional costs on owners and operators of fishing vessels.

The bill also would impose a mandate on the owners and operators of certain U.S. vessels by prohibiting the vessels from receiving shark fins at sea that are not naturally attached to the carcass. The cost would be any loss in net income to the owners and operators of those vessels. CBO estimates that such costs would not be significant in relation to the threshold established in UMRA.

Estimate prepared by: Federal costs: Jeff LaFave; Impact on state, local, and tribal governments: Ryan Miller; Impact on the private sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 850 as reported by the Committee includes several provisions which, if enacted and signed into law, would strengthen the implementation and enforcement of the Shark Finning Prohibition Act of 2000 (SFPA). The bill would clarify in statute what was already popularly understood to be the scope of application of the SFPA prior to the 2008 ruling by the Federal Court of Appeals for the 9th Circuit, discussed *supra*. Furthermore, the bill would simplify how shark finning is defined by conforming that definition with fins-partially-attached requirements which already exist under Federal fishery management plans for sharks and other highly migratory species in the Exclusive Economic Zone in the Atlantic and the Gulf of Mexico. Accordingly, the only foreseeable regulatory impacts of S. 850 will be: (1) to substantially lessen the likelihood that law-abiding persons will be wrongly accused of shark finning; and (2) to enhance the ability of Federal fisheries law enforcement

authorities to identify successfully and prosecute shark finning violations.

ECONOMIC IMPACT

The Committee foresees no negative economic impact associated with S. 850 other than those relating specifically to commercial shark fishing activity in the Pacific and off the coast of Virginia and possibly some neighboring mid-Atlantic States, discussed in the Section-by-Section Analysis, *infra*.

PRIVACY

The reported bill would have little, if any, impact on the personal privacy of individuals.

PAPERWORK

The reported bill should not increase significantly paperwork requirements for individuals or businesses.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides the following identification of congressionally directed spending items contained in the bill, as reported:

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section would provide that the legislation may be cited as the Shark Conservation Act of 2009.

Section 2. Amendment of High Seas Driftnet Fishing Moratorium Protection Act

This section would make several amendments to the High Seas Driftnet Fishing Moratorium Protection Act to enable the Secretary of Commerce, in consultation with the Secretary of State, to pursue the adoption by international fishery management organizations and members thereof of shark conservation measures comparable to those of the United States, and to take action against countries whose fishing vessels target or incidentally take sharks if those countries lack a shark conservation program comparable to that of the United States. The Committee wishes to make clear that the provisions of this section are intended to be construed in a manner consistent with United States obligations as a member of the World Trade Organization and under all other applicable international agreements.

Subsection (a) of this section would amend section 608 of the High Seas Driftnet Fishing Moratorium Protection Act, 16 U.S.C. 1826i, to require the Secretary of Commerce, in consultation with the Secretary of State and in cooperation with the relevant fishery management councils and advisory committees, to take actions to improve the effectiveness of international fishery management organizations of which the United States is a member by: (1) urging such organizations to adopt shark conservation measures, including measures to prohibit removal of any of the fins of a shark (includ-

ing the tail) and discarding the carcass of the shark at sea; and (2) urging such organizations and the members thereof to adopt or expand market-related measures requiring conservation of sharks, including measures comparable to those of the United States to prohibit removing any of the fins of a shark (including the tail) and discarding the carcass at sea, taking into account different conditions.

Subsection (b) of this section would amend section 609 of the High Seas Driftnet Fishing Moratorium Protection Act, 16 U.S.C. 1826j, to include shark conservation measures among the statutory guidelines which must be used by the Secretary of Commerce to define “illegal, unreported, or unregulated fishing” for purposes of the identification and prohibition requirements of that Act.

Subsection (c) of this section would amend section 610 of the High Seas Driftnet Fishing Moratorium Protection Act, 16 U.S.C. 1826k, to authorize the Secretary of Commerce to identify and list a nation under that Act if: (1) fishing vessels of that nation are engaged, or have been engaged during the preceding calendar year, in fishing activities or practices in waters beyond any national jurisdiction that target or incidentally catch sharks; and (2) that nation has not adopted a regulatory program to provide for the conservation of sharks, including measures to prohibit removal of any of the fins of a shark (including the tail) and discarding the carcass at sea, that is comparable to that of the United States, taking into account different conditions. This subsection would also require the Secretary of Commerce to begin making the identifications required under paragraph (2) of section (6)(a) of the High Seas Driftnet Fishing Moratorium Protection Act, as amended by this Act, not later than one year after the date of enactment of this Act.

Section 3. Amendment of Magnuson-Stevens Fishery Conservation and Management Act

This section would amend subparagraph (1)(P) of section 307 of the MSA to simplify and strengthen the existing prohibition on shark finning. It would eliminate the second element of the crime of shark finning under current law, which requires that the carcass of a shark be discarded at sea (after one or more fins are removed) in order for a violation to have occurred, and provides simply that it is unlawful to remove any of the fins of a shark, including the tail, at sea. This section would also enhance the prohibitions against having custody, control, or possession of a shark fin aboard a fishing vessel without the corresponding carcass, or landing such a fin without the corresponding carcass, by requiring that the fins remain naturally attached to the corresponding carcass in such instances. Finally, this section would address the 9th Circuit Court of Appeals ruling regarding vessels to which the shark finning prohibition applies by specifying that it is unlawful to transfer a shark fin from one vessel to another vessel at sea, or to receive a shark fin in such a transfer, without the fin being naturally attached to the corresponding carcass.

This section of S. 850 would also revise the current rebuttable presumption language of section 307(1) of the MSA, 16 U.S.C. 1857(1). It provides that: (1) if any shark fin, including the tail, is found aboard a vessel other than a fishing vessel without being naturally attached to the corresponding carcass, there is a rebutta-

ble presumption that the fin was transferred in violation of the new prohibition against vessels transferring or receiving fins at sea established by this section; or (2) if, after landing, the total weight of shark fins, including the tail, landed from any vessel is greater than five percent of the total weight of shark carcasses landed, there is a rebuttable presumption that such fins were taken, held, or landed in violation of subparagraph (1)(P) of Section 307 as amended by this section.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

HIGH SEAS DRIFTNET FISHING MORATORIUM PROTECTION ACT

SEC. 608. ACTION TO STRENGTHEN INTERNATIONAL FISHERY MANAGEMENT ORGANIZATIONS.

[16 U.S.C. 1826i]

The Secretary, in consultation with the Secretary of State, and in cooperation with relevant fishery management councils and any relevant advisory committees, shall take actions to improve the effectiveness of international fishery management organizations in conserving and managing fish stocks under their jurisdiction. These actions shall include—

(1) urging international fishery management organizations to which the United States is a member—

(A) to incorporate multilateral market-related measures against member or nonmember governments whose vessels engage in illegal, unreported, or unregulated fishing;

(B) to seek adoption of lists that identify fishing vessels and vessel owners engaged in illegal, unreported, or unregulated fishing that can be shared among all members and other international fishery management organizations;

(C) to seek international adoption of a centralized vessel monitoring system in order to monitor and document capacity in fleets of all nations involved in fishing in areas under an international fishery management organization's jurisdiction;

(D) to increase use of observers and technologies needed to monitor compliance with conservation and management measures established by the organization, including vessel monitoring systems and automatic identification systems; **[and]**

(E) to seek adoption of stronger port state controls in all nations, particularly those nations in whose ports vessels engaged in illegal, unreported, or unregulated fishing land or transship fish; *and*

(F) *to adopt shark conservation measures, including measures to prohibit removal of any of the fins of a shark (including the tail) and discarding the carcass of the shark at sea;*

(2) urging international fishery management organizations to which the United States is a member, as well as all members of those organizations, to adopt and expand the use of market-related measures to combat illegal, unreported, or unregulated fishing, including—

(A) import prohibitions, landing restrictions, or other market-based measures needed to enforce compliance with international fishery management organization measures, such as quotas and catch limits;

(B) import restrictions or other market-based measures to prevent the trade or importation of fish caught by vessels identified multilaterally as engaging in illegal, unreported, or unregulated fishing; and

(C) catch documentation and certification schemes to improve tracking and identification of catch of vessels engaged in illegal, unreported, or unregulated fishing, including advance transmission of catch documents to ports of entry; **[and]**

(3) seeking to enter into international agreements that require measures for the conservation of sharks, including measures to prohibit removal of any of the fins of a shark (including the tail) and discarding the carcass of the shark at sea, that are comparable to those of the United States, taking into account different conditions; and

[(3)] (4) urging other nations at bilateral, regional, and international levels, including the Convention on International Trade in Endangered Species of Fauna and Flora and the World Trade Organization to take all steps necessary, consistent with international law, to adopt measures and policies that will prevent fish or other living marine resources harvested by vessels engaged in illegal, unreported, or unregulated fishing from being traded or imported into their nation or territories.

SEC. 609. ILLEGAL, UNREPORTED, OR UNREGULATED FISHING.

[16 U.S.C. 1826j]

(a) IDENTIFICATION.—The Secretary shall identify, and list in the report under section 607, a nation if fishing vessels of that nation are engaged, or have been engaged at any point during the preceding 2 years, in illegal, unreported, or unregulated fishing—

(1) the relevant international fishery management organization has failed to implement effective measures to end the illegal, unreported, or unregulated fishing activity by vessels of that nation or the nation is not a party to, or does not maintain cooperating status with, such organization; or

(2) where no international fishery management organization exists with a mandate to regulate the fishing activity in question.

(b) NOTIFICATION.—An identification under subsection (a) or section 610(a) is deemed to be an identification under section 101(b)(1)(A) of the High Seas Driftnet Fisheries Enforcement Act (16 U.S.C. 1826a(b)(1)(A)), and the Secretary shall notify the President and that nation of such identification.

(c) CONSULTATION.—No later than 60 days after submitting a report to Congress under section 607, the Secretary, acting through the Secretary of State, shall—

(1) notify nations listed in the report of the requirements of this section;

(2) initiate consultations for the purpose of encouraging such nations to take the appropriate corrective action with respect to the offending activities of their fishing vessels identified in the report; and

(3) notify any relevant international fishery management organization of the actions taken by the United States under this section.

(d) IUU CERTIFICATION PROCEDURE.—

(1) CERTIFICATION.—The Secretary shall establish a procedure, consistent with the provisions of subchapter II of chapter 5 of title 5, United States Code, for determining if a nation identified under subsection (a) and listed in the report under section 607 has taken appropriate corrective action with respect to the offending activities of its fishing vessels identified in the report under section 607. The certification procedure shall provide for notice and an opportunity for comment by any such nation. The Secretary shall determine, on the basis of the procedure, and certify to the Congress no later than 90 days after the date on which the Secretary promulgates a final rule containing the procedure, and biennially thereafter in the report under section 607—

(A) whether the government of each nation identified under subsection (a) has provided documentary evidence that it has taken corrective action with respect to the offending activities of its fishing vessels identified in the report; or

(B) whether the relevant international fishery management organization has implemented measures that are effective in ending the illegal, unreported, or unregulated fishing activity by vessels of that nation.

(2) ALTERNATIVE PROCEDURE.—The Secretary may 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 (1) if the Secretary determines that—

(A) the vessel has not engaged in illegal, unreported, or unregulated fishing under an international fishery management agreement to which the United States is a party; or

(B) the vessel is not identified by an international fishery management organization as participating in illegal, unreported, or unregulated fishing activities.

(3) EFFECT OF CERTIFICATION.—

(A) IN GENERAL.—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))—

(i) 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

(ii) shall not apply to any nation identified under subsection (a) for which the Secretary has issued a positive certification under this subsection.

(B) EXCEPTIONS.—Subparagraph (A)(i) does not apply—

(i) to the extent that such provisions would apply to sport fishing equipment or to fish or fish products not managed under the applicable international fishery agreement; or

(ii) if there is no applicable international fishery agreement, to the extent that such provisions would apply to fish or fish products caught by vessels not engaged in illegal, unreported, or unregulated fishing.

(e) ILLEGAL, UNREPORTED, OR UNREGULATED FISHING DEFINED.—

(1) IN GENERAL.—In this Act the term “illegal, unreported, or unregulated fishing” has the meaning established under paragraph (2).

(2) SECRETARY TO DEFINE TERM WITHIN LEGISLATIVE GUIDELINES.—Within 3 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary shall publish a definition of the term “illegal, unreported, or unregulated fishing” for purposes of this Act.

(3) GUIDELINES.—The Secretary shall include in the definition, at a minimum—

(A) fishing activities that violate conservation and management measures required under an international fishery management agreement to which the United States is a party, including catch limits or quotas, capacity restrictions, [and] bycatch reduction requirements[;], and shark conservation measures;

(B) overfishing of fish stocks shared by the United States, for which there are no applicable international conservation or management measures or in areas with no applicable international fishery management organization or agreement, that has adverse impacts on such stocks; and

(C) fishing activity that has an adverse impact on seamounts, hydrothermal vents, and cold water corals located beyond national jurisdiction, for which there are no applicable conservation or management measures or in areas with no applicable international fishery management organization or 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.

SEC. 610. EQUIVALENT CONSERVATION MEASURES.

[16 U.S.C. 1826k]

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

(1) a nation if—

[(1)] (A) fishing vessels of that nation are engaged, or have been engaged during the preceding calendar year in fishing activities or practices;

[(A)] (i) in waters beyond any national jurisdiction that result in bycatch of a protected living marine resource; or

[(B)] (ii) 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)] (B) 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)] (C) 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[.]; and

(2) a nation if—

(A) fishing vessels of that nation are engaged, or have been engaged during the preceding calendar year, in fishing activities or practices in waters beyond any national jurisdiction that target or incidentally catch sharks; and

(B) the nation has not adopted a regulatory program to provide for the conservation of sharks, including measures to prohibit removal of any of the fins of a shark (including the tail) and discarding the carcass of the shark at sea, 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

(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 condi-

tions, 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.

MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT

SEC. 307. PROHIBITED ACTS.

[16 U.S.C. 1857]

It is unlawful—

(1) for any person—

(A) to violate any provision of this Act or any regulation or permit issued pursuant to this Act;

(B) to use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, of an applicable permit issued pursuant to this Act;

(C) to violate any provision of, or regulation under, an applicable governing international fishery agreement entered into pursuant to section 201(c);

(D) to refuse to permit any officer authorized to enforce the provisions of this Act (as provided for in section 311) to board a fishing vessel subject to such person’s control for purposes of conducting any search or inspection in connection with the enforcement of this Act or any regulation, permit, or agreement referred to in subparagraph (A) or (C);

(E) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in subparagraph (D);

(F) to resist a lawful arrest for any act prohibited by this section;

(G) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this Act or any regulation, permit, or agreement referred to in subparagraph (A) or (C);

(H) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing

that such other person has committed any act prohibited by this section;

(I) to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United States fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act;

(J) to ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live lobster of the species *Homarus americanus*, that—

(i) is smaller than the minimum possession size in effect at the time under the American Lobster Fishery Management Plan, as implemented by regulations published in part 649 of title 50, Code of Federal Regulations, or any successor to that plan implemented under this title, or in the absence of any such plan, is smaller than the minimum possession size in effect at the time under a coastal fishery management plan for American lobster adopted by the Atlantic States Marine Fisheries Commission under the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5101 et seq.);

(ii) is bearing eggs attached to its abdominal appendages; or

(iii) bears evidence of the forcible removal of extruded eggs from its abdominal appendages;

(K) to steal or attempt to steal or to negligently and without authorization remove, damage, or tamper with—

(i) fishing gear owned by another person, which is located in the exclusive economic zone,

(ii) fish contained in such fishing gear;

(L) to forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with any observer on a vessel under this Act, or any data collector employed by the National Marine Fisheries Service or under contract to any person to carry out responsibilities under this Act;

(M) to engage in large-scale driftnet fishing that is subject to the jurisdiction of the United States, including use of a fishing vessel of the United States to engage in such fishing beyond the exclusive economic zone of any nation;

(N) to strip pollock of its roe and discard the flesh of the pollock;

(O) to knowingly and willfully fail to disclose, or to falsely disclose, any financial interest as required under section 302(j), or to knowingly vote on a Council decision in violation of section 302(j)(7)(A);

[(P)(i) to remove any of the fins of a shark (including the tail) and discard the carcass of the shark at sea;

[(ii) to have custody, control, or possession of any such fin aboard a fishing vessel without the corresponding carcass; or

[(iii) to land any such fin without the corresponding carcass;]

(P)(i) to remove any of the fins of a shark (including the tail) at sea;

(ii) to have custody, control, or possession of any such fin aboard a fishing vessel unless it is naturally attached to the corresponding carcass;

(iii) to transfer any such fin from one vessel to another vessel at sea, or to receive any such fin in such transfer, without the fin naturally attached to the corresponding carcass; or

(iv) to land any such fin that is not naturally attached to the corresponding carcass, or to land any shark carcass without such fins naturally attached;

(Q) to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish taken, possessed, transported, or sold in violation of any foreign law or regulation; or

(R) to use any fishing vessel to engage in fishing in Federal or State waters, or on the high seas or in the waters of another country, after the Secretary has made a payment to the owner of that fishing vessel under section 312(b)(2).

【For purposes of subparagraph (P) there is a rebuttable presumption that any shark fins landed from a fishing vessel or found on board a fishing vessel were taken, held, or landed in violation of subparagraph (P) if the total weight of shark fins landed or found on board exceeds 5 percent of the total weight of shark carcasses landed or found on board.】

For purposes of subparagraph (P), there shall be a rebuttable presumption that if any shark fin (including the tail) is found aboard a vessel, other than a fishing vessel, without being naturally attached to the corresponding carcass, such fin was transferred in violation of subparagraph (P)(iii) or that if, after landing, the total weight of shark fins (including the tail) landed from any vessel exceeds five percent of the total weight of shark carcasses landed, such fins were taken, held, or landed in violation of subparagraph (P). In such subparagraph, the term “naturally attached”, with respect to a shark fin, means attached to the corresponding shark carcass through some portion of uncut skin.

(2) for any vessel other than a vessel of the United States, and for the owner or operator of any vessel other than a vessel of the United States, to engage—

(A) in fishing within the boundaries of any State, except—

(i) recreational fishing permitted under section 201(i);

(ii) fish processing permitted under section 306(c); or
(iii) transshipment at sea of fish or fish products within the boundaries of any State in accordance with a permit approved under section 204(d);

(B) in fishing, except recreational fishing permitted under section 201(i), within the exclusive economic zone, or for any anadromous species or Continental Shelf fishery

resources beyond such zone, unless such fishing is authorized by, and conducted in accordance with, a valid and applicable permit issued pursuant to section 204(b), (c), or (d); or

(C) except as permitted under section 306(c), in fish processing (as defined in paragraph (4)(A) of such section) within the internal waters of a State (as defined in paragraph (4)(B) of such section);

(3) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to transfer at sea directly or indirectly, or attempt to so transfer at sea, any United States harvested fish to any foreign fishing vessel, while such foreign vessel is within the exclusive economic zone or within the boundaries of any State except to the extent that the foreign fishing vessel has been permitted under section 204(d) or section 306(c) to receive such fish;

(4) for any fishing vessel other than a vessel of the United States to operate, and for the owner or operator of a fishing vessel other than a vessel of the United States to operate such vessel, in the exclusive economic zone or within the boundaries of any State, if—

(A) all fishing gear on the vessel is not stored below deck or in an area where it is not normally used, and not readily available, for fishing; or

(B) all fishing gear on the vessel which is not so stored is not secured and covered so as to render it unusable for fishing; unless such vessel is authorized to engage in fishing in the area in which the vessel is operating; and

(5) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to engage in fishing in the waters of a foreign nation in a manner that violates an international fishery agreement between that nation and the United States that has been subject to Congressional oversight in the manner described in section 203, or any regulations issued to implement such an agreement; except that the binding provisions of such agreement and implementing regulations shall have been published in the Federal Register prior to such violation.