

MAGNUSON-STEVENSON FISHERIES CONSERVATION ACT, as codified

16 USC CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT 01/26/98

TITLE 16 - CONSERVATION
CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT

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This chapter is referred to in sections 917, 971b, 971d, 1432, 1827, 3125, 3373, 3377, 3601, 3607, 3631, 4102, 5103, 5106, 5107a, 5107b, 5504, 5609 of this title; title 22 section 1980; title 33 section 1321; title 42 sections 9601, 9603; title 46 section 12108; title 48 section 1904.

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TITLE 16 - CONSERVATION

CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT

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TITLE 16 - CONSERVATION

CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT

SUBCHAPTER I - GENERALLY

Sec. 1801. Findings, purposes and policy

(a) Findings

The Congress finds and declares the following:

(1) The fish off the coasts of the United States, the highly migratory species of the high seas, the species which dwell on or in the Continental Shelf appertaining to the United States, and the anadromous species which spawn in United States rivers or estuaries, constitute valuable and renewable natural resources. These fishery resources contribute to the food supply, economy, and health of the Nation and provide recreational opportunities.

(2) Certain stocks of fish have declined to the point where their survival is threatened, and other stocks of fish have been so substantially reduced in number that they could become similarly threatened as a consequence of (A) increased fishing pressure, (B) the inadequacy of fishery resource conservation and management practices and controls, or (C) direct and indirect habitat losses which have resulted in a diminished capacity to support existing fishing levels.

(3) Commercial and recreational fishing constitutes a major source of employment and contributes significantly to the economy

of the Nation. Many coastal areas are dependent upon fishing and related activities, and their economies have been badly damaged by the overfishing of fishery resources at an ever-increasing rate over the past decade. The activities of massive foreign fishing fleets in waters adjacent to such coastal areas have contributed to such damage, interfered with domestic fishing efforts, and caused destruction of the fishing gear of United States fishermen.

(4) International fishery agreements have not been effective in preventing or terminating the overfishing of these valuable fishery resources. There is danger that irreversible effects from overfishing will take place before an effective international agreement on fishery management jurisdiction can be negotiated, signed, ratified, and implemented.

(5) Fishery resources are finite but renewable. If placed under sound management before overfishing has caused irreversible effects, the fisheries can be conserved and maintained so as to provide optimum yields on a continuing basis.

(6) A national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, to facilitate long-term protection of essential fish habitats, and to realize the full potential of the Nation's fishery resources.

(7) A national program for the development of fisheries which are underutilized or not utilized by the United States fishing industry, including bottom fish off Alaska, is necessary to assure that our citizens benefit from the employment, food supply, and revenue which could be generated thereby.

(8) The collection of reliable data is essential to the effective conservation, management, and scientific understanding of the fishery resources of the United States.

(9) One of the greatest long-term threats to the viability of commercial and recreational fisheries is the continuing loss of marine, estuarine, and other aquatic habitats. Habitat considerations should receive increased attention for the conservation and management of fishery resources of the United States.

(10) Pacific Insular Areas contain unique historical, cultural, legal, political, and geographical circumstances which make fisheries resources important in sustaining their economic growth.

(b) Purposes

It is therefore declared to be the purposes of the Congress in this chapter -

(1) to take immediate action to conserve and manage the fishery

resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by exercising (A) sovereign rights for the purposes of exploring, exploiting, conserving, and managing all fish, within the exclusive economic zone established by Presidential Proclamation 5030, dated March 10, 1983, and (B) exclusive fishery management authority beyond the exclusive economic zone over such anadromous species and Continental Shelf fishery resources;

(2) to support and encourage the implementation and enforcement of international fishery agreements for the conservation and management of highly migratory species, and to encourage the negotiation and implementation of additional such agreements as necessary;

(3) to promote domestic commercial and recreational fishing under sound conservation and management principles, including the promotion of catch and release programs in recreational fishing;

(4) to provide for the preparation and implementation, in accordance with national standards, of fishery management plans which will achieve and maintain, on a continuing basis, the optimum yield from each fishery;

(5) to establish Regional Fishery Management Councils to exercise sound judgment in the stewardship of fishery resources through the preparation, monitoring, and revision of such plans under circumstances (A) which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States;

(6) to encourage the development by the United States fishing industry of fisheries which are currently underutilized or not utilized by United States fishermen, including bottom fish off Alaska, and to that end, to ensure that optimum yield determinations promote such development in a non-wasteful manner; and

(7) to promote the protection of essential fish habitat in the review of projects conducted under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat.

(c) Policy

It is further declared to be the policy of the Congress in this chapter -

(1) to maintain without change the existing territorial or other ocean jurisdiction of the United States for all purposes other than the conservation and management of fishery resources, as provided for in this chapter;

(2) to authorize no impediment to, or interference with, recognized legitimate uses of the high seas, except as necessary for the conservation and management of fishery resources, as provided for in this chapter;

(3) to assure that the national fishery conservation and management program utilizes, and is based upon, the best scientific information available; involves, and is responsive to the needs of, interested and affected States and citizens; considers efficiency; draws upon Federal, State, and academic capabilities in carrying out research, administration, management, and enforcement; considers the effects of fishing on immature fish and encourages development of practical measures that minimize bycatch and avoid unnecessary waste of fish; and is workable and effective;

(4) to permit foreign fishing consistent with the provisions of this chapter;

(5) to support and encourage active United States efforts to obtain internationally acceptable agreements which provide for effective conservation and management of fishery resources, and to secure agreements to regulate fishing by vessels or persons beyond the exclusive economic zones of any nation;

(6) to foster and maintain the diversity of fisheries in the United States; and

(7) to ensure that the fishery resources adjacent to a Pacific Insular Area, including resident or migratory stocks within the exclusive economic zone adjacent to such areas, be explored, developed, conserved, and managed for the benefit of the people of such area and of the United States.

(Pub. L. 94-265, Sec. 2, Apr. 13, 1976, 90 Stat. 331; Pub. L. 95-354, Sec. 2, Aug. 28, 1978, 92 Stat. 519; Pub. L. 96-561, title II, Sec. 233, Dec. 22, 1980, 94 Stat. 3299; Pub. L. 99-659, title I, Sec. 101(c)(1), Nov. 14, 1986, 100 Stat. 3707; Pub. L. 101-627, title I, Sec. 101, Nov. 28, 1990, 104 Stat. 4437; Pub. L. 102-251, title III, Sec. 301(a), Mar. 9, 1992, 106 Stat. 62; Pub. L. 104-297, title I, Sec. 101, Oct. 11, 1996, 110 Stat. 3560.)

AMENDMENT OF SUBSECTION (B)(1)

Pub. L. 102-251, title III, Sec. 301(a), 308, Mar. 9, 1992, 106 Stat. 62, 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

(b)(1) is amended by inserting ", and fishery resources in the special areas" before the semicolon at the end.

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) and (c), was in the original "this Act", meaning Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, known as the Magnuson-Stevens Fishery Conservation and Management Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

Presidential Proclamation 5030, referred to in subsec. (b)(1), is set out under section 1453 of this title.

AMENDMENTS

1996 - Subsec. (a)(2). Pub. L. 104-297, Sec. 101(1), added par. (2) and struck out former par. (2) which read as follows: "As a consequence of increased fishing pressure and because of the inadequacy of fishery conservation and management practices and controls (A) certain stocks of such fish have been overfished to the point where their survival is threatened, and (B) other such stocks have been so substantially reduced in number that they could become similarly threatened."

Subsec. (a)(6). Pub. L. 104-297, Sec. 101(2), inserted "to facilitate long-term protection of essential fish habitats," after "to insure conservation,".

Subsec. (a)(9), (10). Pub. L. 104-297, Sec. 101(3), added pars. (9) and (10).

Subsec. (b)(3). Pub. L. 104-297, Sec. 101(4), substituted "principles, including the promotion of catch and release programs in recreational fishing" for "principles".

Subsec. (b)(5). Pub. L. 104-297, Sec. 101(5), struck out "and" after semicolon at end.

Subsec. (b)(6). Pub. L. 104-297, Sec. 101(6), substituted "development in a non-wasteful manner; and" for "development."

Subsec. (b)(7). Pub. L. 104-297, Sec. 101(7), added par. (7).

Subsec. (c)(3). Pub. L. 104-297, Sec. 101(8), substituted "considers efficiency" for "promotes efficiency" and inserted "minimize bycatch and" after "practical measures that".

Subsec. (c)(7). Pub. L. 104-297, Sec. 101(9)-(11), added par. (7).

1990 - Subsec. (a)(8). Pub. L. 101-627, Sec. 101(a), added par. (8).

Subsec. (b)(1)(A). Pub. L. 101-627, Sec. 101(b)(1), struck out "except highly migratory species" after "fish".

Subsec. (b)(5). Pub. L. 101-627, Sec. 101(b)(2), substituted "exercise sound judgment in the stewardship of fishery resources

through the preparation, monitoring, and revision of" for "prepare, monitor, and revise".

Subsec. (c)(3). Pub. L. 101-627, Sec. 101(c)(1), inserted "considers the effects of fishing on immature fish and encourages development of practical measures that avoid unnecessary waste of fish;" after "and enforcement;".

Subsec. (c)(5). Pub. L. 101-627, Sec. 101(c)(3), substituted ", and to secure agreements to regulate fishing by vessels or persons beyond the exclusive economic zones of any nation; and" for period at end.

Subsec. (c)(6). Pub. L. 101-627, Sec. 101(c)(4), added par. (6).

1986 - Subsec. (b)(1). Pub. L. 99-659, Sec. 101(c)(1)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by establishing (A) a fishery conservation zone within which the United States will assume exclusive fishery management authority over all fish, except highly migratory species, and (B) exclusive fishery management authority beyond such zone over such anadromous species and Continental Shelf fishery resources;".

Subsec. (c)(5). Pub. L. 99-659, Sec. 101(c)(1)(B), amended par. (5) generally. Prior to amendment, par. (5) read as follows: "to support and encourage continued active United States efforts to obtain an internationally acceptable treaty, at the Third United Nations Conference on the Law of the Sea, which provides for effective conservation and management of fishery resources."

1980 - Subsec. (b)(6). Pub. L. 96-561 inserted ", and to that end, to ensure that optimum yield determinations promote such development" after "fish off Alaska".

1978 - Subsec. (a)(7). Pub. L. 95-354, Sec. 2(a), substituted "the United States fishing industry" for "United States fishermen".

Subsec. (b)(6). Pub. L. 95-354, Sec. 2(b), inserted requirement for development by the United States fishing industry.

REFERENCES TO MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT
REDESIGNATED AS REFERENCES TO MAGNUSON-STEVENSON FISHERY
CONSERVATION AND MANAGEMENT ACT

Pub. L. 104-208, div. A, title I, Sec. 101(a) (title II, Sec. 211(b)), Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that: "Effective 15 days after the enactment of the Sustainable Fisheries Act (Pub. L. 104-297, enacted Oct. 11, 1996), all references to the Magnuson Fishery Conservation and Management Act (see Short Title note below) shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act."

REFERENCES TO FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976
REDESIGNATED AS REFERENCES TO MAGNUSON FISHERY CONSERVATION AND
MANAGEMENT ACT

Section 238(b) of title II of Pub. L. 96-561 provided that: "Effective 15 days after the date of enactment of this title (Dec. 22, 1980), all references to the Fishery Conservation and Management Act of 1976 (see Short title note below) shall be redesignated as references to the Magnuson Fishery Conservation and Management Act."

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.

SHORT TITLE OF 1996 AMENDMENT

Section 1(a) of Pub. L. 104-297 provided that: "This Act (enacting sections 1803, 1861a, 1881 to 1881d, 1883, 5107a, and 5107b of this title and sections 1279f and 1279g of Title 46, Appendix, Shipping, amending this section, sections 757d, 1362, 1802, 1812, 1821 to 1824, 1826, 1851 to 1858, 1860, 1861, 1862, 1863, 1882, 1883, 4107, 5102, 5103, and 5108 of this title, section 713c-3 of Title 15, Commerce and Trade, and section 1274 of Title 46, Appendix, enacting provisions set out as notes under sections 1802, 1853 to 1856, 1861a, and 1881c of this title and section 1245 of Title 46, Appendix, amending provisions set out as a note under section 971c of this title, and repealing provisions set out as a note under section 1851 of this title) may be cited as the 'Sustainable Fisheries Act'."

SHORT TITLE OF 1995 AMENDMENT

Pub. L. 104-43, title VI, Sec. 601, Nov. 3, 1995, 109 Stat. 391, provided that: "This title (enacting sections 1826d to 1826g of this title and provisions set out as a note under section 1826d of this title) may be cited as the 'High Seas Driftnet Fishing Moratorium Protection Act'."

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102-582, Sec. 1, Nov. 2, 1992, 106 Stat. 4900, provided that: "This Act (enacting sections 1826a to 1826c of this title and section 1707a of Title 46, Appendix, Shipping, amending sections 1362, 1371, 1852, and 1862 of this title, section 1978 of Title 22, Foreign Relations and Intercourse, and section 2110 of Title 46, repealing section 1111c of Title 46, Appendix, and enacting provisions set out as notes under sections 1823, 1826a,

and 1861 of this title and section 2110 of Title 46) may be cited as the 'High Seas Driftnet Fisheries Enforcement Act'."

SHORT TITLE OF 1990 AMENDMENT

Section 1(a) of Pub. L. 101-627 provided that: "The Act (enacting sections 971b-1, 1385, and 1862 of this title, amending this section, sections 757d, 758e-5, 971a, 971b, 971d, 971h, 1371, 1802, 1811, 1812, 1821, 1822, 1824 to 1826, 1852 to 1861, 1882, 4005, 4006, 4008, 4103, and 4107 of this title, section 713c-3 of Title 15, Commerce and Trade, and section 1977 of Title 22, Foreign Relations and Intercourse, and enacting provisions set out as notes under sections 971a, 1373, 1802, 1812, 1822, 1825, 1854, 4004, and 4005 of this title) may be cited as the 'Fishery Conservation Amendments of 1990'."

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100-220, Sec. 1, Dec. 29, 1987, 101 Stat. 1458, provided that: "This Act (enacting section 1912 of Title 33, Navigation and Navigable Waters, amending sections 1121 to 1131, 1901 to 1903, 1905, and 1907 to 1909 of Title 33, and enacting provisions set out as notes under this section, sections 1822 and 1823 of this title, sections 883a, 1121, 1125, 1901, 1902, and 2267 of Title 33, and section 6981 of Title 42, The Public Health and Welfare) may be cited as the 'United States-Japan Fishery Agreement Approval Act of 1987'."

SHORT TITLE OF 1980 AMENDMENT

Section 201 of title II of Pub. L. 96-561 provided that: "This title (enacting section 1511b of Title 15, Commerce and Trade, amending sections 917, 1801, 1821, 1824, 1852, and 1855 of this title, section 713c-3 of Title 15, sections 1972 and 1980 of Title 22, Foreign Relations and Intercourse, section 1321 of Title 33, Navigation and Navigable Waters, section 1843 of Title 43, Public Lands, and sections 1271, 1273, 1274, and 1275 of Title 46, Appendix, Shipping, and enacting provisions set out as notes under this section, sections 742c, 1821, and 1824 of this title, and section 1980 of Title 22) may be cited as the 'American Fisheries Promotion Act'."

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95-6, Sec. 1, Feb. 21, 1977, 91 Stat. 14, provided: "That this joint resolution (enacting section 1826 of this title, repealing sections 981 to 991 of this title, and enacting provisions set out as notes under sections 981 and 1823 of this title) may be cited as the 'Fishery Conservation Zone Transition Act'."

SHORT TITLE

Section 1 of Pub. L. 94-265, as amended by Pub. L. 96-561, title II, Sec. 238(a), Dec. 22, 1980, 94 Stat. 3300; Pub. L. 104-208, div. A, title I, Sec. 101(a) (title II, Sec. 211(a)), Sept. 30,

1996, 110 Stat. 3009, 3009-41, provided: "That this Act (enacting this chapter, amending section 971 of this title and sections 1972 and 1973 of Title 22, Foreign Relations and Intercourse, enacting provisions set out as notes under this section and sections 971, 1362, 1857 of this title, and sections 1972 and 1973 of Title 22, and repealing chapters 21 and 21A of this title) may be cited as the 'Magnuson-Stevens Fishery Conservation and Management Act'."

(Section 101(a) (title II, Sec. 211(a)) of div. A of Pub. L. 104-208 provided that the amendment made by that section to section 1 of Pub. L. 94-265, set out above, is effective 15 days after Oct. 11, 1996.)

(Section 238(a) of Pub. L. 96-561 provided that the amendment made by that section to section 1 of Pub. L. 94-265, set out above, is effective 15 days after Dec. 22, 1980.)

EX. ORD. NO. 12962. RECREATIONAL FISHERIES

Ex. Ord. No. 12962, June 7, 1995, 60 F.R. 30769, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in furtherance of the purposes of the Fish and Wildlife Act of 1956 (16 U.S.C. 742a-d, and e-j), the Fish and Wildlife Coordination Act (16 U.S.C. 661-666c), the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801-1882), and other pertinent statutes, and in order to conserve, restore, and enhance aquatic systems to provide for increased recreational fishing opportunities nationwide, it is ordered as follows:

Section 1. Federal Agency Duties. Federal agencies shall, to the extent permitted by law and where practicable, and in cooperation with States and Tribes, improve the quantity, function, sustainable productivity, and distribution of U.S. aquatic resources for increased recreational fishing opportunities by: (a) developing and encouraging partnerships between governments and the private sector to advance aquatic resource conservation and enhance recreational fishing opportunities;

(b) identifying recreational fishing opportunities that are limited by water quality and habitat degradation and promoting restoration to support viable, healthy, and, where feasible, self-sustaining recreational fisheries;

(c) fostering sound aquatic conservation and restoration endeavors to benefit recreational fisheries;

(d) providing access to and promoting awareness of opportunities for public participation and enjoyment of U.S. recreational fishery resources;

(e) supporting outreach programs designed to stimulate angler participation in the conservation and restoration of aquatic

systems;

(f) implementing laws under their purview in a manner that will conserve, restore, and enhance aquatic systems that support recreational fisheries;

(g) establishing cost-share programs, under existing authorities, that match or exceed Federal funds with nonfederal contributions;

(h) evaluating the effects of Federally funded, permitted, or authorized actions on aquatic systems and recreational fisheries and document those effects relative to the purpose of this order; and

(i) assisting private landowners to conserve and enhance aquatic resources on their lands.

Sec. 2. National Recreational Fisheries Coordination Council. A National Recreational Fisheries Coordination Council ("Coordination Council") is hereby established. The Coordination Council shall consist of seven members, one member designated by each of the following Secretaries - Interior, Commerce, Agriculture, Energy, Transportation, and Defense - and one by the Administrator of the Environmental Protection Agency. The Coordination Council shall: (a) ensure that the social and economic values of healthy aquatic systems that support recreational fisheries are considered by Federal agencies in the course of their actions;

(b) reduce duplicative and cost-inefficient programs among Federal agencies involved in conserving or managing recreational fisheries;

(c) share the latest resource information and management technologies to assist in the conservation and management of recreational fisheries;

(d) assess the implementation of the Conservation Plan required under section 3 of this order; and

(e) develop a biennial report of accomplishments of the Conservation Plan.

The representatives designated by the Secretaries of Commerce and the Interior shall cochair the Coordination Council.

Sec. 3. Recreational Fishery Resources Conservation Plan. (a) Within 12 months of the date of this order, the Coordination Council, in cooperation with Federal agencies, States, and Tribes, and after consulting with the Federally chartered Sport Fishing and Boating Partnership Council, shall develop a comprehensive Recreational Fishery Resources Conservation Plan ("Conservation Plan").

(b) The Conservation Plan will set forth a 5-year agenda for Federal agencies identified by the Coordination Council. In so doing, the Conservation Plan will establish, to the extent permitted by law and where practicable; (1) measurable objectives

to conserve and restore aquatic systems that support viable and healthy recreational fishery resources, (2) actions to be taken by the identified Federal agencies, (3) a method of ensuring the accountability of such Federal agencies, and (4) a comprehensive mechanism to evaluate achievements. The Conservation Plan will, to the extent practicable, be integrated with existing plans and programs, reduce duplication, and will include recommended actions for cooperation with States, Tribes, conservation groups, and the recreational fisheries community.

Sec. 4. Joint Policy for Administering the Endangered Species Act of 1973. All Federal agencies will aggressively work to identify and minimize conflicts between recreational fisheries and their respective responsibilities under the Endangered Species Act of 1973 ("ESA") (16 U.S.C. 1531 et seq.). Within 6 months of the date of this order, the Fish and Wildlife Service and the National Marine Fisheries Service will promote compatibility and reduce conflicts between the administration of the ESA and recreational fisheries by developing a joint agency policy that will; (1) ensure consistency in the administration of the ESA between and within the two agencies, (2) promote collaboration with other Federal, State, and Tribal fisheries managers, and (3) improve and increase efforts to inform nonfederal entities of the requirements of the ESA.

Sec. 5. Sport Fishing and Boating Partnership Council. To assist in the implementation of this order, the Secretary of the Interior shall expand the role of the Sport Fishing and Boating Partnership Council to: (a) monitor specific Federal activities affecting aquatic systems and the recreational fisheries they support; (b) review and evaluate the relation of Federal policies and activities to the status and conditions of recreational fishery resources; and (c) prepare an annual report of its activities, findings, and recommendations for submission to the Coordination Council.

Sec. 6. Judicial Review. This order is intended only to improve the internal management of the executive branch and it is not intended to create any right, benefit or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any other person.

William J. Clinton.

16 USC Sec. 1802

01/26/98

TITLE 16 - CONSERVATION
CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT
SUBCHAPTER I - GENERALLY

Sec. 1802. Definitions

As used in this chapter, unless the context otherwise requires -

(1) The term "anadromous species" means species of fish which spawn in fresh or estuarine waters of the United States and which migrate to ocean waters.

(2) The term "bycatch" means fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards. Such term does not include fish released alive under a recreational catch and release fishery management program.

(3) The term "charter fishing" means fishing from a vessel carrying a passenger for hire (as defined in section 2101(21a) of title 46) who is engaged in recreational fishing.

(4) The term "commercial fishing" means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter or trade.

(5) The term "conservation and management" refers to all of the rules, regulations, conditions, methods, and other measures (A) which are required to rebuild, restore, or maintain, and which are useful in rebuilding, restoring, or maintaining, any fishery resource and the marine environment; and (B) which are designed to assure that -

(i) a supply of food and other products may be taken, and that recreational benefits may be obtained, on a continuing basis;

(ii) irreversible or long-term adverse effects on fishery resources and the marine environment are avoided; and

(iii) there will be a multiplicity of options available with respect to future uses of these resources.

(6) The term "Continental Shelf" means the seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, of the United States, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of such areas.

(7) The term "Continental Shelf fishery resources" means the following:

CNIDARIA

Bamboo Coral - *Acanella* spp.;

Black Coral - *Antipathes* spp.;

Gold Coral - *Callogorgia* spp.;

Precious Red Coral - *Corallium* spp.;

Bamboo Coral - *Keratoisis* spp.; and

Gold Coral - *Parazoanthus* spp.

CRUSTACEA

Tanner Crab - *Chionoecetes tanneri*;

Tanner Crab - *Chionoecetes opilio*;
Tanner Crab - *Chionoecetes angulatus*;
Tanner Crab - *Chionoecetes bairdi*;
King Crab - *Paralithodes camtschatica*;
King Crab - *Paralithodes platypus*;
King Crab - *Paralithodes brevipes*;
Lobster - *Homarus americanus*;
Dungeness Crab - *Cancer magister*;
California King Crab - *Paralithodes californiensis*;
California King Crab - *Paralithodes rathbuni*;
Golden King Crab - *Lithodes aequispinus*;
Northern Stone Crab - *Lithodes maja*;
Stone Crab - *Menippe mercenaria*; and
Deep-sea Red Crab - *Chaceon quinque-dens*.

MOLLUSKS

Red Abalone - *Haliotis rufescens*;
Pink Abalone - *Haliotis corrugata*;
Japanese Abalone - *Haliotis kamtschatkana*;
Queen Conch - *Strombus gigas*;
Surf Clam - *Spisula solidissima*; and
Ocean Quahog - *Arctica islandica*.

SPONGES

Glove Sponge - *Spongia cheiris*;
Sheepswool Sponge - *Hippiospongia lachne*;
Grass Sponge - *Spongia graminea*; and
Yellow Sponge - *Spongia barbera*.

If the Secretary determines, after consultation with the Secretary of State, that living organisms of any other sedentary species are, at the harvestable stage, either -

- (A) immobile on or under the seabed, or
- (B) unable to move except in constant physical contact with the seabed or subsoil,

of the Continental Shelf which appertains to the United States, and publishes notice of such determination in the Federal Register, such sedentary species shall be considered to be added to the foregoing list and included in such term for purposes of this chapter.

(8) The term "Council" means any Regional Fishery Management Council established under section 1852 of this title.

(9) The term "economic discards" means fish which are the target of a fishery, but which are not retained because they are of an undesirable size, sex, or quality, or for other economic reasons.

(10) The term "essential fish habitat" means those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity.

(11) The term "exclusive economic zone" means the zone established by Proclamation Numbered 5030, dated March 10, 1983. For purposes of applying this chapter, the inner boundary of that zone is a line coterminous with the seaward boundary of each of the coastal States.

(12) The term "fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds.

(13) The term "fishery" means -

(A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and

(B) any fishing for such stocks.

(14) The term "fishery resource" means any fishery, any stock of fish, any species of fish, and any habitat of fish.

(15) The term "fishing" means -

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

(B) the attempted catching, taking, or harvesting of fish;

(C) any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(D) any operations at sea in support of, or in preparation for, any activity described in subparagraphs (A) through (C).

Such term does not include any scientific research activity which is conducted by a scientific research vessel.

(16) The term "fishing community" means a community which is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew and United States fish processors that are based in such community.

(17) The term "fishing vessel" means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for -

(A) fishing; or

(B) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

(18) The term "foreign fishing" means fishing by a vessel other than a vessel of the United States.

(19) The term "high seas" means all waters beyond the territorial sea of the United States and beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States.

(20) The term "highly migratory species" means tuna species,

marlin (*Tetrapturus* spp. and *Makaira* spp.), oceanic sharks, sailfishes (*Istiophorus* spp.), and swordfish (*Xiphias gladius*).

(21) The term "individual fishing quota" means a Federal permit under a limited access system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person. Such term does not include community development quotas as described in section 1855(i) of this title.

(22) The term "international fishery agreement" means any bilateral or multilateral treaty, convention, or agreement which relates to fishing and to which the United States is a party.

(23) The term "large-scale driftnet fishing" means a method of fishing in which a gillnet composed of a panel or panels of webbing, or a series of such gillnets, with a total length of two and one-half kilometers or more is placed in the water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.

(24) (FOOTNOTE 1) The term "Marine Fisheries Commission" means the Atlantic States Marine Fisheries Commission, the Gulf States Marine Fisheries Commission, or the Pacific States Marine Fisheries Commission.

(FOOTNOTE 1) See Codification note below.

(25) The term "migratory range" means the maximum area at a given time of the year within which fish of an anadromous species or stock thereof can be expected to be found, as determined on the basis of scale pattern analysis, tagging studies, or other reliable scientific information, except that the term does not include any part of such area which is in the waters of a foreign nation.

(26) The term "national standards" means the national standards for fishery conservation and management set forth in section 1851 of this title.

(27) The term "observer" means any person required or authorized to be carried on a vessel for conservation and management purposes by regulations or permits under this chapter.

(28) The term "optimum", with respect to the yield from a fishery, means the amount of fish which -

(A) will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems;

(B) is prescribed on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant social, economic, or ecological factor; and

(C) in the case of an overfished fishery, provides for

rebuilding to a level consistent with producing the maximum sustainable yield in such fishery.

(29) The terms "overfishing" and "overfished" mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.

(30) The term "Pacific Insular Area" means American Samoa, Guam, the Northern Mariana Islands, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Wake Island, or Palmyra Atoll, as applicable, and includes all islands and reefs appurtenant to such island, reef, or atoll.

(31) The term "person" means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

(32) The term "recreational fishing" means fishing for sport or pleasure.

(33) The term "regulatory discards" means fish harvested in a fishery which fishermen are required by regulation to discard whenever caught, or are required by regulation to retain but not sell.

(34) The term "Secretary" means the Secretary of Commerce or his designee.

(35) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States.

(36) (FOOTNOTE 1) The term "special areas" means the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990. In particular, the term refers to those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.

(37) The term "stock of fish" means a species, subspecies, geographical grouping, or other category of fish capable of management as a unit.

(38) The term "treaty" means any international fishery agreement which is a treaty within the meaning of section 2 of article II of the Constitution.

(39) The term "tuna species" means the following:

Albacore Tuna - *Thunnus alalunga*;
Bigeye Tuna - *Thunnus obesus*;
Bluefin Tuna - *Thunnus thynnus*;
Skipjack Tuna - *Katsuwonus pelamis*; and
Yellowfin Tuna - *Thunnus albacares*.

(40) The term "United States", when used in a geographical context, means all the States thereof.

(41) The term "United States fish processors" means facilities located within the United States for, and vessels of the United States used or equipped for, the processing of fish for commercial use or consumption.

(42) The term "United States harvested fish" means fish caught, taken, or harvested by vessels of the United States within any fishery regulated under this chapter.

(43) The term "vessel of the United States" means -

(A) any vessel documented under chapter 121 of title 46;

(B) any vessel numbered in accordance with chapter 123 of title 46 and measuring less than 5 net tons;

(C) any vessel numbered in accordance with chapter 123 of title 46 and used exclusively for pleasure; or

(D) any vessel not equipped with propulsion machinery of any kind and used exclusively for pleasure.

(44) The term "vessel subject to the jurisdiction of the United States" has the same meaning such term has in section 1903(c) of title 46, Appendix.

(45) The term "waters of a foreign nation" means any part of the territorial sea or exclusive economic zone (or the equivalent) of a foreign nation, to the extent such territorial sea or exclusive economic zone is recognized by the United States.

(Pub. L. 94-265, Sec. 3, Apr. 13, 1976, 90 Stat. 333; Pub. L. 95-354, Sec. 3, Aug. 28, 1978, 92 Stat. 519; Pub. L. 97-453, Sec. 15(a), Jan. 12, 1983, 96 Stat. 2492; Pub. L. 99-659, title I, Sec. 101(a), 112, Nov. 14, 1986, 100 Stat. 3706, 3715; Pub. L. 100-239, Sec. 2, Jan. 11, 1988, 101 Stat. 1778; Pub. L. 101-627, title I, Sec. 102(a), title X, Sec. 1001(c), Nov. 28, 1990, 104 Stat. 4438, 4468; Pub. L. 102-251, title III, Sec. 301(b), Mar. 9, 1992, 106 Stat. 62; Pub. L. 104-297, title I, Sec. 102, Oct. 11, 1996, 110 Stat. 3561.)

REFERENCES IN TEXT

Proclamation Numbered 5030, referred to in par. (11), is set out under section 1453 of this title.

CODIFICATION

Pub. L. 102-251, Sec. 301(b), which directed amendment of this section by adding a new par. (24) reading "(24) The term 'special areas' means the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, the term refers to those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured." and redesignating former pars. (24) to (32) as (25) to (33), respectively, was not executed, to reflect the probable intent of Congress, because the amendments were inconsistent with the amendments by Pub. L. 104-297 which added par. (36) which is substantially identical to the par. (24) added by Pub. L. 102-251, made successive redesignations of pars. (2) to (44), and added and amended various other pars. See 1996 Amendment notes below.

AMENDMENTS

1996 - Pars. (2) to (6). Pub. L. 104-297, Sec. 102(1), added pars. (2) to (4) and redesignated former pars. (2) and (3) as (5) and (6), respectively. Former pars. (4) to (6) redesignated (7) to (9), respectively.

Par. (7). Pub. L. 104-297, Sec. 102(2)(B), substituted "Deep-sea Red Crab - Chaceon quinquegens" for "Deep-sea Red Crab - Geryon quinquegens" in list under heading "Crustacea".

Pub. L. 104-297, Sec. 102(2)(A), which directed substitution of "Cnidaria" for "Coelenterata" in heading of list of corals, was executed by making the substitution for "Colenterata" in that heading to reflect the probable intent of Congress.

Pub. L. 104-297, Sec. 102(1), redesignated par. (4) as (7). Former par. (7) redesignated (10).

Par. (8). Pub. L. 104-297, Sec. 102(1), redesignated par. (5) as (8). Former par. (8) redesignated (11).

Par. (9). Pub. L. 104-297, Sec. 102(3), added par. (9). Former par. (9) redesignated (11).

Pub. L. 104-297, Sec. 102(1), redesignated par. (6) as (9). Former par. (9) redesignated (12).

Par. (10). Pub. L. 104-297, Sec. 102(3), added par. (10). Former par. (10) redesignated (12).

Pub. L. 104-297, Sec. 102(1), redesignated par. (7) as (10). Former par. (10) redesignated (13).

Pars. (11) to (15). Pub. L. 104-297, Sec. 102(3), redesignated pars. (9) to (13) as (11) to (15), respectively. Former pars. (14) and (15) redesignated (16) and (17), respectively.

Pub. L. 104-297, Sec. 102(1), redesignated pars. (8) to (12) as (11) to (15), respectively. Former pars. (13) to (15) redesignated (16) to (18), respectively.

Par. (16). Pub. L. 104-297, Sec. 102(4), added par. (16). Former par. (16) redesignated (17).

Pub. L. 104-297, Sec. 102(3), redesignated par. (14) as (16). Former par. (16) redesignated (18).

Pub. L. 104-297, Sec. 102(1), redesignated par. (13) as (16). Former par. (16) redesignated (19).

Pars. (17) to (20). Pub. L. 104-297, Sec. 102(4), redesignated pars. (16) to (19) as (17) to (20), respectively. Former par. (20) redesignated (21).

Pub. L. 104-297, Sec. 102(3), redesignated pars. (15) to (18) as (17) to (20), respectively. Former pars. (19) and (20) redesignated (21) and (22), respectively.

Pub. L. 104-297, Sec. 102(1), redesignated pars. (14) to (17) as (17) to (20), respectively. Former pars. (18) to (20) redesignated (21) to (23), respectively.

Par. (21). Pub. L. 104-297, Sec. 102(5), added par. (21). Former par. (21) redesignated (22).

Pub. L. 104-297, Sec. 102(4), redesignated par. (20) as (21). Former par. (21) redesignated (22).

Pub. L. 104-297, Sec. 102(3), redesignated par. (19) as (21). Former par. (21) redesignated (23).

Pub. L. 104-297, Sec. 102(1), redesignated par. (18) as (21). Former par. (21) redesignated (24).

Par. (22). Pub. L. 104-297, Sec. 102(5), redesignated par. (21) as (22). Former par. (22) redesignated (23).

Pub. L. 104-297, Sec. 102(4), redesignated par. (21) as (22). Former par. (22) redesignated (23).

Pub. L. 104-297, Sec. 102(3), redesignated par. (20) as (22). Former par. (22) redesignated (24).

Pub. L. 104-297, Sec. 102(1), redesignated par. (19) as (22). Former par. (22) redesignated (25).

Par. (23). Pub. L. 104-297, Sec. 102(6), substituted "of two and one-half kilometers" for "of one and one-half miles".

Pub. L. 104-297, Sec. 102(5), redesignated par. (22) as (23). Former par. (23) redesignated (24).

Pub. L. 104-297, Sec. 102(4), redesignated par. (22) as (23). Former par. (23) redesignated (24).

Pub. L. 104-297, Sec. 102(3), redesignated par. (21) as (23). Former par. (23) redesignated (25).

Pub. L. 104-297, Sec. 102(1), redesignated par. (20) as (23). Former par. (23) redesignated (26).

Pars. (24) to (27). Pub. L. 104-297, Sec. 102(5), redesignated pars. (23) to (26) as (24) to (27), respectively. Former par. (27)

redesignated (28).

Pub. L. 104-297, Sec. 102(4), redesignated pars. (23) to (26) as (24) to (27), respectively. Former par. (27) redesignated (28).

Pub. L. 104-297, Sec. 102(3), redesignated pars. (22) to (25) as (24) to (27), respectively. Former pars. (26) and (27) redesignated (28) and (29), respectively.

Pub. L. 104-297, Sec. 102(1), redesignated pars. (21) to (24) as (24) to (27), respectively. Former pars. (25) to (27) redesignated (28) to (30), respectively.

Par. (28). Pub. L. 104-297, Sec. 102(7), added par. (28) and struck out former par. (28) which read as follows: "The term 'optimum', with respect to the yield from a fishery, means the amount of fish -

"(A) which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and

"(B) which is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor."

Pub. L. 104-297, Sec. 102(5), redesignated par. (27) as (28). Former par. (28) redesignated (29).

Pub. L. 104-297, Sec. 102(4), redesignated par. (27) as (28). Former par. (28) redesignated (29).

Pub. L. 104-297, Sec. 102(3), redesignated par. (26) as (28). Former par. (28) redesignated (30).

Pub. L. 104-297, Sec. 102(1), redesignated par. (25) as (28). Former par. (28) redesignated (31).

Pars. (29), (30). Pub. L. 104-297, Sec. 102(8), added pars. (29) and (30). Former pars. (29) and (30) redesignated (31) and (32), respectively.

Pub. L. 104-297, Sec. 102(5), redesignated pars. (28) and (29) as (29) and (30), respectively. Former par. (30) redesignated (31).

Pub. L. 104-297, Sec. 102(4), redesignated pars. (28) and (29) as (29) and (30), respectively. Former par. (30) redesignated (31).

Pub. L. 104-297, Sec. 102(3), redesignated pars. (27) and (28) as (29) and (30), respectively. Former pars. (29) and (30) redesignated (31) and (32), respectively.

Pub. L. 104-297, Sec. 102(1), redesignated pars. (26) and (27) as (29) and (30), respectively. Former pars. (29) and (30) redesignated (32) and (33), respectively.

Par. (31). Pub. L. 104-297, Sec. 102(8), redesignated par. (29) as (31). Former par. (31) redesignated (33).

Pub. L. 104-297, Sec. 102(5), redesignated par. (30) as (31). Former par. (31) redesignated (32).

Pub. L. 104-297, Sec. 102(4), redesignated par. (30) as (31). Former par. (31) redesignated (32).

Pub. L. 104-297, Sec. 102(3), redesignated par. (29) as (31).
Former par. (31) redesignated (33).

Pub. L. 104-297, Sec. 102(1), redesignated par. (28) as (31).
Former par. (31) redesignated (34).

Pars. (32), (33). Pub. L. 104-297, Sec. 102(9), added pars. (32)
and (33). Former pars. (32) and (33) redesignated (34) and (35),
respectively.

Pub. L. 104-297, Sec. 102(8), redesignated pars. (30) and (31) as
(32) and (33), respectively. Former pars. (32) and (33)
redesignated (34) and (35), respectively.

Pub. L. 104-297, Sec. 102(5), redesignated pars. (31) and (32) as
(32) and (33), respectively. Former par. (33) redesignated (34).

Pub. L. 104-297, Sec. 102(4), redesignated pars. (31) and (32) as
(32) and (33), respectively. Former par. (33) redesignated (34).

Pub. L. 104-297, Sec. 102(3), redesignated pars. (30) and (31) as
(32) and (33), respectively. Former pars. (32) and (33)
redesignated (34) and (35), respectively.

Pub. L. 104-297, Sec. 102(1), redesignated pars. (29) and (30) as
(32) and (33), respectively. Former par. (32) redesignated (35).

Pars. (34), (35). Pub. L. 104-297, Sec. 102(9), redesignated
pars. (32) and (33) as (34) and (35), respectively. Former pars.
(34) and (35) redesignated (36) and (37), respectively.

Pub. L. 104-297, Sec. 102(8), redesignated pars. (32) and (33) as
(34) and (35), respectively. Former pars. (34) and (35)
redesignated (36) and (37), respectively.

Pub. L. 104-297, Sec. 102(5), redesignated pars. (33) and (34) as
(34) and (35), respectively. Former par. (35) redesignated (36).

Pub. L. 104-297, Sec. 102(4), redesignated pars. (33) and (34) as
(34) and (35), respectively. Former par. (35) redesignated (36).

Pub. L. 104-297, Sec. 102(3), redesignated pars. (32) and (33) as
(34) and (35), respectively. Former pars. (34) and (35)
redesignated (36) and (37), respectively.

Pub. L. 104-297, Sec. 102(1), redesignated pars. (31) and (32) as
(34) and (35), respectively.

Par. (36). Pub. L. 104-297, Sec. 102(10), added par. (36). Former
par. (36) redesignated (37).

Pub. L. 104-297, Sec. 102(9), redesignated par. (34) as (36).
Former par. (36) redesignated (38).

Pub. L. 104-297, Sec. 102(8), redesignated par. (34) as (36).
Former par. (36) redesignated (38).

Pub. L. 104-297, Sec. 102(5), redesignated par. (35) as (36).
Former par. (36) redesignated (37).

Pub. L. 104-297, Sec. 102(4), redesignated par. (35) as (36).
Former par. (36) redesignated (37).

Pub. L. 104-297, Sec. 102(3), redesignated par. (34) as (36).

Par. (37). Pub. L. 104-297, Sec. 102(10), redesignated par. (36)

as (37). Former par. (37) redesignated (38).

Pub. L. 104-297, Sec. 102(9), redesignated par. (35) as (37).
Former par. (37) redesignated (39).

Pub. L. 104-297, Sec. 102(8), redesignated par. (35) as (37).
Former par. (37) redesignated (39).

Pub. L. 104-297, Sec. 102(5), redesignated par. (36) as (37).
Former par. (37) redesignated (38).

Pub. L. 104-297, Sec. 102(4), redesignated par. (36) as (37).
Former par. (37) redesignated (38).

Pub. L. 104-297, Sec. 102(3), redesignated par. (35) as (37).

Par. (38). Pub. L. 104-297, Sec. 102(10), redesignated par. (37)
as (38). Former par. (38) redesignated (39).

Pub. L. 104-297, Sec. 102(9), redesignated par. (36) as (38).
Former par. (38) redesignated (40).

Pub. L. 104-297, Sec. 102(8), redesignated par. (36) as (38).
Former par. (38) redesignated (40).

Pub. L. 104-297, Sec. 102(5), redesignated par. (37) as (38).
Former par. (38) redesignated (39).

Pub. L. 104-297, Sec. 102(4), redesignated par. (37) as (38).

Par. (39). Pub. L. 104-297, Sec. 102(10), redesignated par. (38)
as (39). Former par. (39) redesignated (40).

Pub. L. 104-297, Sec. 102(9), redesignated par. (37) as (39).
Former par. (39) redesignated (41).

Pub. L. 104-297, Sec. 102(8), redesignated par. (37) as (39).
Former par. (39) redesignated (41).

Pub. L. 104-297, Sec. 102(5), redesignated par. (38) as (39).

Pars. (40), (41). Pub. L. 104-297, Sec. 102(10), redesignated
pars. (39) and (40) as (40) and (41), respectively. Former par.
(41) redesignated (42).

Pub. L. 104-297, Sec. 102(9), redesignated pars. (38) and (39) as
(40) and (41), respectively. Former pars. (40) and (41)
redesignated (42) and (43), respectively.

Pub. L. 104-297, Sec. 102(8), redesignated pars. (38) and (39) as
(40) and (41), respectively.

Par. (42). Pub. L. 104-297, Sec. 102(11), which directed the
substitution of "regulated under this chapter" for "for which a
fishery management plan prepared under subchapter IV of this
chapter or a preliminary fishery management plan prepared under
section 1821(g) of this title has been implemented", was executed
by making substitution for language which referred to "section
1821(h)", notwithstanding directory language directing
substitution for language which referred to "section 1821(g)" to
reflect the probable intent of Congress.

Pub. L. 104-297, Sec. 102(10), redesignated par. (41) as (42).
Former par. (42) redesignated (43).

Pub. L. 104-297, Sec. 102(9), redesignated par. (40) as (42).

Par. (43). Pub. L. 104-297, Sec. 102(10), redesignated par. (42) as (43). Former par. (43) redesignated (44).

Pub. L. 104-297, Sec. 102(9), redesignated par. (41) as (43).

Par. (44). Pub. L. 104-297, Sec. 102(12), added par. (44). Former par. (44) redesignated (45).

Pub. L. 104-297, Sec. 102(10), redesignated par. (43) as (44).

Par. (45). Pub. L. 104-297, Sec. 102(12), redesignated par. (44) as (45).

1990 - Par. (7). Pub. L. 101-627, Sec. 102(a)(2), substituted "and birds" for ", birds, and highly migratory species".

Par. (14). Pub. L. 101-627, Sec. 102(a)(3), amended par. (14) generally. Prior to amendment, par. (14) read as follows: "The term 'highly migratory species' means species of tuna which, in the course of their life cycle, spawn and migrate over great distances in waters of the ocean."

Par. (16). Pub. L. 101-627, Sec. 102(a)(4), added par. (16). Former par. (16) redesignated (17).

Par. (17). Pub. L. 101-627, Sec. 102(a)(1), redesignated par. (16) as (17). Former par. (17) redesignated (19).

Par. (18). Pub. L. 101-627, Sec. 102(a)(5), added par. (18). Former par. (18) redesignated (21).

Par. (19). Pub. L. 101-627, Sec. 102(a)(1), redesignated par. (17) as (19). Former par. (19) redesignated (22).

Par. (20). Pub. L. 101-627, Sec. 102(a)(6), added par. (20). Former par. (20) redesignated (23).

Pars. (21) to (26). Pub. L. 101-627, Sec. 102(a)(1), redesignated pars. (18) to (23) as (21) to (26), respectively. Former pars. (24) to (26) redesignated (28) to (30), respectively.

Par. (27). Pub. L. 101-627, Sec. 102(a)(7), added par. (27). Former par. (27) redesignated (31).

Pars. (28) to (31). Pub. L. 101-627, Sec. 102(a)(1), redesignated pars. (24) to (27) as (28) to (31), respectively.

Par. (32). Pub. L. 101-627, Sec. 102(a)(8), added par. (32).

1988 - Par. (27). Pub. L. 100-239 amended par. (27) generally. Prior to amendment, par. (27) read as follows: "The term 'vessel of the United States' means -

"(A) any vessel documented under the laws of the United States;

"(B) any vessel numbered in accordance with the Federal Boat Safety Act of 1971 and measuring less than 5 net tons; or

"(C) any vessel numbered under the Federal Boat Safety Act of 1971 and used exclusively for pleasure."

1986 - Par. (4). Pub. L. 99-659, Sec. 112, in provisions under heading "Mollusks" substituted "Arctica islandica" for "Artica islandica" and under heading "Sponges" substituted "Spongia cheiris" for "Hippiospongia canaliculata".

Pars. (6) to (8). Pub. L. 99-659, Sec. 101(a), added par. (6), redesignated former pars. (6) and (7) as (7) and (8), respectively, and struck out former par. (8) which defined "fishery conservation zone" as the fishery conservation zone established by section 1811 of this title.

1983 - Par. (27). Pub. L. 97-453 designated existing provisions as subpar. (A), struck out "or registered under the laws of any State" after "United States", and added subpars. (B) and (C).

1978 - Pars. (25) to (27). Pub. L. 95-354 added pars. (25) and (26) and redesignated former par. (25) as (27).

CHANGE OF NAME

"Pacific States Marine Fisheries Commission" substituted for "Pacific Marine Fisheries Commission" in par. (24) pursuant to section 1001(c) of Pub. L. 101-627, set out below.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 405(a) of Pub. L. 104-297 provided that:

"Notwithstanding section 308 of the Act entitled 'An Act to provide for the designation of the Flower Garden Banks National Marine Sanctuary', approved March 9, 1992 (Public Law 102-251; 106 Stat. 66) (set out as a note under section 773 of this title) hereinafter referred to as the 'FGB Act', section 301(b) of that Act (amending this section, see Codification note above) (adding a definition of the term 'special areas') shall take effect on the date of enactment of this Act (Oct. 11, 1996)."

REDESIGNATION OF PACIFIC MARINE FISHERIES COMMISSION AS PACIFIC STATES MARINE FISHERIES COMMISSION

Section 1001 of Pub. L. 101-627 provided that:

"(a) In General. - The Congress consents to and approves of the amendments described in subsection (b) to the interstate compact which constituted the Pacific Marine Fisheries Commission, approved by the Act of July 24, 1947 (61 Stat. 419; hereinafter in this section referred to as the 'compact').

"(b) Amendment Described. - The amendments referred to in subsection (a) are the amendments approved and ratified before the effective date of this section (Nov. 28, 1990) by the contracting States to the compact, which -

"(1) amend Article III of the compact to redesignate the Pacific Marine Fisheries Commission as the 'Pacific States Marine Fisheries Commission'; and

"(2) make such other amendments to the compact as are necessary solely to conform the text of the compact to the amendment described in paragraph (1).

"(c) References. - Any reference in a law, map, regulation, document, paper, or other record of the United States to the Pacific Marine Fisheries Commission constituted by the compact is deemed to be a reference to the 'Pacific States Marine Fisheries

Commission'."

TERRITORIAL SEA OF UNITED STATES

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 917a, 971, 971d, 1371, 1383a, 1387, 1854, 3377, 3601 of this title; title 22 sections 1971, 1980; title 46 sections 8103, 8704; title 46 App. section 1271; title 48 section 1904.

16 USC Sec. 1803

01/26/98

TITLE 16 - CONSERVATION

CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT SUBCHAPTER I - GENERALLY

Sec. 1803. Authorization of appropriations

There are authorized to be appropriated to the Secretary for the purposes of carrying out the provisions of this chapter, not to exceed the following sums:

- (1) \$147,000,000 for fiscal year 1996;
- (2) \$151,000,000 for fiscal year 1997;
- (3) \$155,000,000 for fiscal year 1998; and
- (4) \$159,000,000 for fiscal year 1999.

(Pub. L. 94-265, Sec. 4, as added Pub. L. 104-297, title I, Sec. 103, Oct. 11, 1996, 110 Stat. 3563.)

16 USC SUBCHAPTER II - UNITED STATES RIGHTS AND AUTHORITY REGARDING FISH AND FISHERY RESOURCES 01/26/98

TITLE 16 - CONSERVATION

CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT

SUBCHAPTER II - UNITED STATES RIGHTS AND AUTHORITY REGARDING FISH AND FISHERY RESOURCES

SUBCHAPTER II - UNITED STATES RIGHTS AND AUTHORITY REGARDING FISH AND FISHERY RESOURCES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 22 section 1972.

TITLE 16 - CONSERVATION
CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT
SUBCHAPTER II - UNITED STATES RIGHTS AND AUTHORITY REGARDING FISH
AND FISHERY RESOURCES

Sec. 1811. United States sovereign rights to fish and fishery
management authority

(a) In the exclusive economic zone

Except as provided in section 1812 of this title, the United States claims, and will exercise in the manner provided for in this chapter, sovereign rights and exclusive fishery management authority over all fish, and all Continental Shelf fishery resources, within the exclusive economic zone.

(b) Beyond the exclusive economic zone

The United States claims, and will exercise in the manner provided for in this chapter, exclusive fishery management authority over the following:

(1) All anadromous species throughout the migratory range of each such species beyond the exclusive economic zone; except that that management authority does not extend to such species during the time they are found within any waters of a foreign nation.

(2) All Continental Shelf fishery resources beyond the exclusive economic zone.

(Pub. L. 94-265, title I, Sec. 101, Apr. 13, 1976, 90 Stat. 336; Pub. L. 99-659, title I, Sec. 101(b), Nov. 14, 1986, 100 Stat. 3706; Pub. L. 101-627, title I, Sec. 102(b), Nov. 28, 1990, 104 Stat. 4438; Pub. L. 102-251, title III, Sec. 301(c), Mar. 9, 1992, 106 Stat. 62.)

AMENDMENT OF SECTION

Pub. L. 102-251, title III, Sec. 301(c), 308, Mar. 9, 1992, 106 Stat. 62, 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 "and special areas" before the period at the end and subsection (b) is amended by inserting after paragraph (2) the following new paragraph:

(3) All fishery resources in the special areas.

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, known as the Magnuson-Stevens Fishery Conservation and Management Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

AMENDMENTS

1990 - Subsec. (b)(1). Pub. L. 101-627 substituted "any waters of a foreign nation" for "any foreign nation's territorial sea or exclusive economic zone (or the equivalent), to the extent that that sea or zone is recognized by the United States".

1986 - Pub. L. 99-659 amended section generally. Prior to amendment, section read as follows: "There is established a zone contiguous to the territorial sea of the United States to be known as the fishery conservation zone. The inner boundary of the fishery conservation zone is a line coterminous with the seaward boundary of each of the coastal States, and the outer boundary of such zone is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured."

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 773, 1827 of this title.

16 USC Sec. 1812

01/26/98

TITLE 16 - CONSERVATION

CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT

SUBCHAPTER II - UNITED STATES RIGHTS AND AUTHORITY REGARDING FISH AND FISHERY RESOURCES

Sec. 1812. Highly migratory species

The United States shall cooperate directly or through appropriate

international organizations with those nations involved in fisheries for highly migratory species with a view to ensuring conservation and shall promote the achievement of optimum yield of such species throughout their range, both within and beyond the exclusive economic zone.

(Pub. L. 94-265, title I, Sec. 102, Apr. 13, 1976, 90 Stat. 336; Pub. L. 99-659, title I, Sec. 101(b), Nov. 14, 1986, 100 Stat. 3707; Pub. L. 101-627, title I, Sec. 103(a), Nov. 28, 1990, 104 Stat. 4439; Pub. L. 104-297, title I, Sec. 104, Oct. 11, 1996, 110 Stat. 3563.)

AMENDMENTS

1996 - Pub. L. 104-297 substituted "shall promote the achievement of optimum yield" for "promoting the objective of optimum utilization".

1990 - Pub. L. 101-627 amended section generally. Prior to amendment, section read as follows: "The sovereign rights and exclusive fishery management authority asserted by the United States under section 1811 of this title over fish do not include, and may not be construed to extend to, highly migratory species of fish."

1986 - Pub. L. 99-659 amended section generally. Prior to amendment, section read as follows: "The United States shall exercise exclusive fishery management authority, in the manner provided for in this chapter, over the following:

"(1) All fish within the fishery conservation zone.

"(2) All anadromous species throughout the migratory range of each such species beyond the fishery conservation zone; except that such management authority shall not extend to such species during the time they are found within any foreign nation's territorial sea or fishery conservation zone (or the equivalent), to the extent that such sea or zone is recognized by the United States.

"(3) All Continental Shelf fishery resources beyond the fishery conservation zone."

EFFECTIVE DATE OF 1990 AMENDMENT

Section 103(c) of Pub. L. 101-627 provided that: "The amendments made by this section (amending this section) shall take effect on January 1, 1992."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1811 of this title.

TITLE 16 - CONSERVATION
CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT
SUBCHAPTER II - UNITED STATES RIGHTS AND AUTHORITY REGARDING FISH
AND FISHERY RESOURCES

Sec. 1813. Omitted

CODIFICATION

Section, Pub. L. 94-265, title I, Sec. 103, Apr. 13, 1976, 90 Stat. 336, which related to exclusion of highly migratory species of fish from exclusive fishery management authority, was omitted in the general revision of this subchapter by section 101(b) of Pub. L. 99-659. See section 1812 of this title.

16 USC SUBCHAPTER III - FOREIGN FISHING AND INTERNATIONAL
FISHERY AGREEMENTS 01/26/98

TITLE 16 - CONSERVATION
CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT
SUBCHAPTER III - FOREIGN FISHING AND INTERNATIONAL FISHERY
AGREEMENTS

**SUBCHAPTER III - FOREIGN FISHING
AND INTERNATIONAL FISHERY AGREEMENTS**

16 USC Sec. 1821 01/26/98

TITLE 16 - CONSERVATION
CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT
SUBCHAPTER III - FOREIGN FISHING AND INTERNATIONAL FISHERY
AGREEMENTS

Sec. 1821. Foreign fishing

(a) In general

After February 28, 1977, no foreign fishing is authorized within the exclusive economic zone, or for anadromous species or Continental Shelf fishery resources beyond the exclusive economic zone, unless such foreign fishing -

(1) is authorized under subsections (b) or (c) of this section or section 1824(e) of this title, or under a permit issued under section 1824(d) of this title;

(2) is not prohibited under subsection (f) of this section; and

(3) is conducted under, and in accordance with, a valid and applicable permit issued pursuant to section 1824 of this title.

(b) Existing international fishery agreements

Foreign fishing described in subsection (a) of this section may be conducted pursuant to an international fishery agreement (subject to the provisions of section 1822(b) or (c) of this title), if such agreement -

(1) was in effect on April 13, 1976; and

(2) has not expired, been renegotiated, or otherwise ceased to be of force and effect with respect to the United States.

(c) Governing international fishery agreements

Foreign fishing described in subsection (a) of this section may be conducted pursuant to an international fishery agreement (other than a treaty) which meets the requirements of this subsection if such agreement becomes effective after application of section 1823 of this title. Any such international fishery agreement shall hereafter in this chapter be referred to as a "governing international fishery agreement". Each governing international fishery agreement shall acknowledge the exclusive fishery management authority of the United States, as set forth in this chapter. It is the sense of the Congress that each such agreement shall include a binding commitment, on the part of such foreign nation and its fishing vessels, to comply with the following terms and conditions:

(1) The foreign nation, and the owner or operator of any fishing vessel fishing pursuant to such agreement, will abide by all regulations promulgated by the Secretary pursuant to this chapter, including any regulations promulgated to implement any applicable fishery management plan or any preliminary fishery management plan.

(2) The foreign nation, and the owner or operator of any fishing vessel fishing pursuant to such agreement, will abide by the requirement that -

(A) any officer authorized to enforce the provisions of this chapter (as provided for in section 1861 of this title) be permitted -

(i) to board, and search or inspect, any such vessel at any time,

(ii) to make arrests and seizures provided for in section 1861(b) of this title whenever such officer has reasonable cause to believe, as a result of such a search or inspection, that any such vessel or any person has committed an act prohibited by section 1857 of this title, and

(iii) to examine and make notations on the permit issued pursuant to section 1824 of this title for such vessel;

(B) the permit issued for any such vessel pursuant to section 1824 of this title be prominently displayed in the wheelhouse of such vessel;

(C) transponders, or such other appropriate position-fixing and identification equipment as the Secretary of the department in which the Coast Guard is operating determines to be appropriate, be installed and maintained in working order on each such vessel;

(D) United States observers required under subsection (h) of this section be permitted to be stationed aboard any such vessel and that all of the costs incurred incident to such stationing, including the costs of data editing and entry and observer monitoring, be paid for, in accordance with such subsection, by the owner or operator of the vessel;

(E) any fees required under section 1824(b)(10) of this title be paid in advance;

(F) agents be appointed and maintained within the United States who are authorized to receive and respond to any legal process issued in the United States with respect to such owner or operator; and

(G) responsibility be assumed, in accordance with any requirements prescribed by the Secretary, for the reimbursement of United States citizens for any loss of, or damage to, their fishing vessels, fishing gear, or catch which is caused by any fishing vessel of that nation;

and will abide by any other monitoring, compliance, or enforcement requirement related to fishery conservation and management which is included in such agreement.

(3) The foreign nation and the owners or operators of all of the fishing vessels of such nation shall not, in any year, harvest an amount of fish which exceeds such nation's allocation of the total allowable level of foreign fishing, as determined under subsection (e) of this section.

(4) The foreign nation will -

(A) apply, pursuant to section 1824 of this title, for any required permits;

(B) deliver promptly to the owner or operator of the appropriate fishing vessel any permit which is issued under that section for such vessel;

(C) abide by, and take appropriate steps under its own laws to assure that all such owners and operators comply with, section 1824(a) of this title and the applicable conditions and restrictions established under section 1824(b)(7) of this title; and

(D) take, or refrain from taking, as appropriate, actions of the kind referred to in subsection (e)(1) of this section in order to receive favorable allocations under such subsection.

(d) Total allowable level of foreign fishing

The total allowable level of foreign fishing, if any, with

respect to any fishery subject to the exclusive fishery management authority of the United States, shall be that portion of the optimum yield of such fishery which will not be harvested by vessels of the United States, as determined in accordance with this chapter.

(e) Allocation of allowable level

(1)(A) The Secretary of State, in cooperation with the Secretary, may make allocations to foreign nations from the total allowable level of foreign fishing which is permitted with respect to each fishery subject to the exclusive fishery management authority of the United States.

(B) From the determinations made under subparagraph (A), the Secretary of State shall compute the aggregate of all of the fishery allocations made to each foreign nation.

(C) The Secretary of State shall initially release to each foreign nation for harvesting up to 50 percent of the allocations aggregate computed for such nation under subparagraph (B), and such release of allocation shall be apportioned by the Secretary of State, in cooperation with the Secretary, among the individual fishery allocations determined for that nation under subparagraph (A). The basis on which each apportionment is made under this subparagraph shall be stated in writing by the Secretary of State.

(D) After the initial release of fishery allocations under subparagraph (C) to a foreign nation, any subsequent release of an allocation for any fishery to such nation shall only be made -

(i) after the lapse of such period of time as may be sufficient for purposes of making the determination required under clause (ii); and

(ii) if the Secretary of State and the Secretary, after taking into account the size of the allocation for such fishery and the length and timing of the fishing season, determine in writing that such nation is complying with the purposes and intent of this paragraph with respect to such fishery.

If the foreign nation is not determined under clause (ii) to be in such compliance, the Secretary of State shall reduce, in a manner and quantity he considers to be appropriate (I) the remainder of such allocation, or (II) if all of such allocation has been released, the next allocation of such fishery, if any, made to such nation.

(E) The determinations required to be made under subparagraphs (A) and (D)(ii), and the apportionments required to be made under subparagraph (C), with respect to a foreign nation shall be based on -

(i) whether, and to what extent, such nation imposes tariff barriers or nontariff barriers on the importation, or otherwise restricts the market access, of both United States fish and

fishery products, particularly fish and fishery products for which the foreign nation has requested an allocation;

(ii) whether, and to what extent, such nation is cooperating with the United States in both the advancement of existing and new opportunities for fisheries exports from the United States through the purchase of fishery products from United States processors, and the advancement of fisheries trade through the purchase of fish and fishery products from United States fishermen, particularly fish and fishery products for which the foreign nation has requested an allocation;

(iii) whether, and to what extent, such nation and the fishing fleets of such nation have cooperated with the United States in the enforcement of United States fishing regulations;

(iv) whether, and to what extent, such nation requires the fish harvested from the exclusive economic zone for its domestic consumption;

(v) whether, and to what extent, such nation otherwise contributes to, or fosters the growth of, a sound and economic United States fishing industry, including minimizing gear conflicts with fishing operations of United States fishermen, and transferring harvesting or processing technology which will benefit the United States fishing industry;

(vi) whether, and to what extent, the fishing vessels of such nation have traditionally engaged in fishing in such fishery;

(vii) whether, and to what extent, such nation is cooperating with the United States in, and making substantial contributions to, fishery research and the identification of fishery resources; and

(viii) such other matters as the Secretary of State, in cooperation with the Secretary, deems appropriate.

(2)(A) For the purposes of this paragraph -

(i) The term "certification" means a certification made by the Secretary that nationals of a foreign country, directly or indirectly, are conducting fishing operations or engaging in trade or taking which diminishes the effectiveness of the International Convention for the Regulation of Whaling. A certification under this section shall also be deemed a certification for the purposes of section 1978(a) of title 22.

(ii) The term "remedial period" means the 365-day period beginning on the date on which a certification is issued with respect to a foreign country.

(B) If the Secretary issues a certification with respect to any foreign country, then each allocation under paragraph (1) that -

(i) is in effect for that foreign country on the date of issuance; or

(ii) is not in effect on such date but would, without regard to

this paragraph, be made to the foreign country within the remedial period;
shall be reduced by the Secretary of State, in consultation with the Secretary, by not less than 50 percent.

(C) The following apply for purposes of administering subparagraph (B) with respect to any foreign country:

(i) If on the date of certification, the foreign country has harvested a portion, but not all, of the quantity of fish specified under any allocation, the reduction under subparagraph (B) for that allocation shall be applied with respect to the quantity not harvested as of such date.

(ii) If the Secretary notified the Secretary of State that it is not likely that the certification of the foreign country will be terminated under section 1978(d) of title 22 before the close of the period for which an allocation is applicable or before the close of the remedial period (whichever close first occurs) the Secretary of State, in consultation with the Secretary, shall reallocate any portion of any reduction made under subparagraph (B) among one or more foreign countries for which no certification is in effect.

(iii) If the certification is terminated under such section 1978(d) of title 22 during the remedial period, the Secretary of State shall return to the foreign country that portion of any allocation reduced under subparagraph (B) that was not reallocated under clause (ii); unless the harvesting of the fish covered by the allocation is otherwise prohibited under this chapter.

(iv) The Secretary may refund or credit, by reason of reduction of any allocation under this paragraph, any fee paid under section 1824 of this title.

(D) If the certification of a foreign country is not terminated under section 1978(d) of title 22 before the close of the last day of the remedial period, the Secretary of State -

(i) with respect to any allocation made to that country and in effect (as reduced under subparagraph (B)) on such last day, shall rescind, effective on and after the day after such last day, any unharvested portion of such allocation; and

(ii) may not thereafter make any allocation to that country under paragraph (1) until the certification is terminated.

(f) Reciprocity

Foreign fishing shall not be authorized for the fishing vessels of any foreign nation unless such nation satisfies the Secretary and the Secretary of State that such nation extends substantially the same fishing privileges to fishing vessels of the United States, if any, as the United States extends to foreign fishing vessels.

(g) Preliminary fishery management plans

The Secretary, when notified by the Secretary of State that any foreign nation has submitted an application under section 1824(b) of this title shall prepare a preliminary fishery management plan for any fishery covered by such application if the Secretary determines that no fishery management plan for that fishery will be prepared and implemented, pursuant to subchapter IV of this chapter, before March 1, 1977. To the extent practicable, each such plan -

(1) shall contain a preliminary description of the fishery and a preliminary determination as to -

(A) the optimum yield from such fishery;

(B) when appropriate, the capacity and extent to which United States fish processors will process that portion of such optimum yield that will be harvested by vessels of the United States; and

(C) the total allowable level of foreign fishing with respect to such fishery;

(2) shall require each foreign fishing vessel engaged or wishing to engage in such fishery to obtain a permit from the Secretary;

(3) shall require the submission of pertinent data to the Secretary, with respect to such fishery, as described in section 1853(a)(5) of this title; and

(4) may, to the extent necessary to prevent irreversible effects from overfishing, with respect to such fishery, contain conservation and management measures applicable to foreign fishing which -

(A) are determined to be necessary and appropriate for the conservation and management of such fishery,

(B) are consistent with the national standards, the other provisions of this chapter, and other applicable law, and

(C) are described in section 1853(b)(2), (3), (4), (5), and (7) of this title.

Each preliminary fishery management plan shall be in effect with respect to foreign fishing for which permits have been issued until a fishery management plan is prepared and implemented, pursuant to subchapter IV of this chapter, with respect to such fishery. The Secretary may, in accordance with section 553 of title 5, also prepare and promulgate interim regulations with respect to any such preliminary plan. Such regulations shall be in effect until regulations implementing the applicable fishery management plan are promulgated pursuant to section 1855 of this title.

(h) Full observer coverage program

(1)(A) Except as provided in paragraph (2), the Secretary shall establish a program under which a United States observer will be

stationed aboard each foreign fishing vessel while that vessel is engaged in fishing within the exclusive economic zone.

(B) The Secretary shall by regulation prescribe minimum health and safety standards that shall be maintained aboard each foreign fishing vessel with regard to the facilities provided for the quartering of, and the carrying out of observer functions by, United States observers.

(2) The requirement in paragraph (1) that a United States observer be placed aboard each foreign fishing vessel may be waived by the Secretary if he finds that -

(A) in a situation where a fleet of harvesting vessels transfers its catch taken within the exclusive economic zone to another vessel, aboard which is a United States observer, the stationing of United States observers on only a portion of the harvesting vessel fleet will provide a representative sampling of the by-catch of the fleet that is sufficient for purposes of determining whether the requirements of the applicable management plans for the by-catch species are being complied with;

(B) in a situation where the foreign fishing vessel is operating under a Pacific Insular Area fishing agreement, the Governor of the applicable Pacific Insular Area, in consultation with the Western Pacific Council, has established an observer coverage program that is at least equal in effectiveness to the program established by the Secretary;

(C) the time during which a foreign fishing vessel will engage in fishing within the exclusive economic zone will be of such short duration that the placing of a United States observer aboard the vessel would be impractical; or

(D) for reasons beyond the control of the Secretary, an observer is not available.

(3) Observers, while stationed aboard foreign fishing vessels, shall carry out such scientific, compliance monitoring, and other functions as the Secretary deems necessary or appropriate to carry out the purposes of this chapter; and shall cooperate in carrying out such other scientific programs relating to the conservation and management of living resources as the Secretary deems appropriate.

(4) In addition to any fee imposed under section 1824(b)(10) of this title and section 1980(e) of title 22 with respect to foreign fishing for any year after 1980, the Secretary shall impose, with respect to each foreign fishing vessel for which a permit is issued under such section 1824 of this title, a surcharge in an amount sufficient to cover all the costs of providing a United States observer aboard that vessel. The failure to pay any surcharge imposed under this paragraph shall be treated by the Secretary as a failure to pay the permit fee for such vessel under section 1824(b)(10) of this title. All surcharges collected by the

Secretary under this paragraph shall be deposited in the Foreign Fishing Observer Fund established by paragraph (5).

(5) There is established in the Treasury of the United States the Foreign Fishing Observer Fund. The Fund shall be available to the Secretary as a revolving fund for the purpose of carrying out this subsection. The Fund shall consist of the surcharges deposited into it as required under paragraph (4). All payments made by the Secretary to carry out this subsection shall be paid from the Fund, only to the extent and in the amounts provided for in advance in appropriation Acts. Sums in the Fund which are not currently needed for the purposes of this subsection shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(6) If at any time the requirement set forth in paragraph (1) cannot be met because of insufficient appropriations, the Secretary shall, in implementing a supplementary observer program:

(A) certify as observers, for the purposes of this subsection, individuals who are citizens or nationals of the United States and who have the requisite education or experience to carry out the functions referred to in paragraph (3);

(B) establish standards of conduct for certified observers equivalent to those applicable to Federal personnel;

(C) establish a reasonable schedule of fees that certified observers or their agents shall be paid by the owners and operators of foreign fishing vessels for observer services; and

(D) monitor the performance of observers to ensure that it meets the purposes of this chapter.

(i) Recreational fishing

Notwithstanding any other provision of this subchapter, foreign fishing vessels which are not operated for profit may engage in recreational fishing within the exclusive economic zone and the waters within the boundaries of a State subject to obtaining such permits, paying such reasonable fees, and complying with such conditions and restrictions as the Secretary and the Governor of the State (or his designee) shall impose as being necessary or appropriate to insure that the fishing activity of such foreign vessels within such zone or waters, respectively, is consistent with all applicable Federal and State laws and any applicable fishery management plan implemented under section 1854 of this title. The Secretary shall consult with the Secretary of State and the Secretary of the Department in which the Coast Guard is operating in formulating the conditions and restrictions to be applied by the Secretary under the authority of this subsection.

(Pub. L. 94-265, title II, Sec. 201, Apr. 13, 1976, 90 Stat. 337; Pub. L. 95-354, Sec. 4(1)-(4), Aug. 28, 1978, 92 Stat. 519, 520; Pub. L. 96-61, Sec. 3(a), Aug. 15, 1979, 93 Stat. 407; Pub. L.

96-118, Sec. 5, Nov. 16, 1979, 93 Stat. 860; Pub. L. 96-561, title II, Sec. 230, 231(a), 236, Dec. 22, 1980, 94 Stat. 3296, 3297, 3299; Pub. L. 97-453, Sec. 2(a), Jan. 12, 1983, 96 Stat. 2481; Pub. L. 98-623, title IV, Sec. 404(1), (2), Nov. 8, 1984, 98 Stat. 3408; Pub. L. 99-386, title II, Sec. 206(a), Aug. 22, 1986, 100 Stat. 823; Pub. L. 99-659, title I, Sec. 101(c)(2), 103(a), Nov. 14, 1986, 100 Stat. 3707, 3708; Pub. L. 101-627, title I, Sec. 104, Nov. 28, 1990, 104 Stat. 4439; Pub. L. 102-251, title III, Sec. 301(d), Mar. 9, 1992, 106 Stat. 63; Pub. L. 103-236, title I, Sec. 139(24), Apr. 30, 1994, 108 Stat. 399; Pub. L. 104-297, title I, Sec. 105(a), Oct. 11, 1996, 110 Stat. 3563.)

AMENDMENT OF SECTION

Pub. L. 102-251, title III, Sec. 301(d), 308, Mar. 9, 1992, 106 Stat. 63, 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, this section is amended:

(1) in subsection (a), (A) by inserting "within the special areas," immediately before "or for anadromous species" and (B) by striking "beyond the exclusive economic zone" and inserting in lieu thereof "beyond such zone or areas";

(2) in subsection (e)(1)(E)(IV)(iv), by inserting "or special areas" immediately after "exclusive economic zone";

(3) in subsection (i), (A) by inserting "or special areas" immediately before the period at the end of paragraph (1)(A), (B) by inserting "or special areas" immediately after "exclusive economic zone" in paragraph (2)(A), and (C) by inserting "or special areas" immediately after "exclusive economic zone" in paragraph (2)(B); and

(4) in subsection (j), (A) by inserting ", special areas," immediately after "exclusive economic zone", and (B) by inserting ", areas," immediately after "such zone".

REFERENCES IN TEXT

This chapter, referred to in subsecs. (c), (d), (e)(2)(C)(iii), (g), and (h)(3), (6)(D), was in the original "this Act", meaning Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, known as the Magnuson-Stevens Fishery Conservation and Management Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

AMENDMENTS

1996 - Subsec. (a)(1), (2). Pub. L. 104-297, Sec. 105(a)(1), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

"(1) is authorized under subsection (b) or (c) of this section;

"(2) is not prohibited by subsection (g) of this section; and".

Subsec. (c)(2)(D). Pub. L. 104-297, Sec. 105(a)(2), substituted "subsection (h)" for "subsection (i)".

Subsec. (f). Pub. L. 104-297, Sec. 105(a)(3), (4), repealed subsec. (f) and redesignated subsec. (g) as (f). See 1994 Amendment note below.

Subsec. (g). Pub. L. 104-297, Sec. 105(a)(4), redesignated subsec. (h) as (g). Former subsec. (g) redesignated (f).

Subsec. (h). Pub. L. 104-297, Sec. 105(a)(4), redesignated subsec. (i) as (h). Former subsec. (h) redesignated (g).

Subsec. (h)(2)(B) to (D). Pub. L. 104-297, Sec. 105(a)(5), added subpar. (B) and redesignated former subpars. (B) and (C) as (C) and (D), respectively.

Subsec. (i). Pub. L. 104-297, Sec. 105(a)(4), (6), redesignated subsec. (j) as (i) and substituted "section 1854" for "section 1855". Former subsec. (i) redesignated (h).

Subsec. (j). Pub. L. 104-297, Sec. 105(a)(4), redesignated subsec. (j) as (i).

1994 - Subsec. (f). Pub. L. 103-236 directed the repeal of section 201(f) of the Fishery Conservation and Management Act, 1976, which was executed by repealing subsec. (f) of this section which was section 201(f) of the Magnuson Fishery Conservation and Management Act. Prior to repeal, subsec. (f) read as follows: "The Secretary and the Secretary of State shall prepare and submit a report to the Congress and the President, not later than July 1 of each year, setting forth -

"(1) a list of species of all allocations made to foreign nations pursuant to subsection (e) of this section and all permits issued pursuant to section 1824(b)(6)(B) of this title; and

"(2) all tariff and nontariff trade barriers imposed by such nations on the importation of such species from the United States."

1990 - Subsec. (d). Pub. L. 101-627 amended subsec. (d) generally, limiting the total allowable level of foreign fishing, with respect to any fishery subject to the exclusive management authority of the United States, to only that part of the potential fishery yield which is not harvested by United States fishermen and deleting the alternative method of determining the total allowable level of foreign fishing based on the annual fishing level for each

harvesting season after the 1980 harvesting season.

1986 - Subsecs. (a), (e)(1)(E)(iv). Pub. L. 99-659, Sec. 101(c)(2), substituted "exclusive economic zone" for "fishery conservation zone" in two places.

Subsec. (f). Pub. L. 99-386 substituted "The Secretary and the Secretary of State shall" for "The Secretary of the Treasury, in cooperation with the Secretary and the Secretary of State, shall".

Subsec. (i)(1). Pub. L. 99-659, Sec. 101(c)(2), 103(a)(1), (2), designated existing provisions as subpar. (A), substituted "exclusive economic zone" for "fishery conservation zone", and added subpar. (B).

Subsec. (i)(2)(A). Pub. L. 99-659, Sec. 101(c)(2), substituted "exclusive economic zone" for "fishery conservation zone".

Subsec. (i)(2)(B). Pub. L. 99-659, Sec. 103(a)(3), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "with respect to any foreign fishing vessel while it is engaged in fishing within the fishery conservation zone -

"(i) the time during which the vessel engages in such fishing will be of such short duration that the placing of a United States observer aboard the vessel would be impractical, or

"(ii) the facilities of the vessel for the quartering of a United States observer, or for the carrying out of observer functions, are so inadequate or unsafe that the health or safety of an observer would be jeopardized; or"

Subsec. (j). Pub. L. 99-659, Sec. 101(c)(2), substituted "exclusive economic zone" for "fishery conservation zone".

1984 - Subsec. (d)(4). Pub. L. 98-623, Sec. 404(1), substituted "may allocate" for "shall allocate" in provisions preceding subpar. (A).

Subsec. (e)(1)(A). Pub. L. 98-623, Sec. 404(2)(A), substituted "may make allocations to foreign nations from" for "shall determine the allocation among foreign nations of".

Subsec. (e)(1)(E)(i). Pub. L. 98-623, Sec. 404(2)(B), substituted "both United States fish and fishery products" for "United States fish or fishery products" and inserted ", particularly fish and fishery products for which the foreign nation has requested an allocation".

Subsec. (e)(1)(E)(ii). Pub. L. 98-623, Sec. 404(2)(C), amended provisions generally, thereby substituting "in both the advancement of existing and new opportunities for fisheries exports from the United States through the purchase of fishery products from United States processors, and the advancement of fisheries trade through the purchase of fish and fishery products from United States fishermen, particularly fish and fishery products for which the foreign nation has requested an allocation" for "in the advancement of existing and new opportunities for fisheries trade,

particularly through the purchase of fish or fishery products from United States processors or from United States fishermen".

1983 - Subsec. (c)(2)(D). Pub. L. 97-453, Sec. 2(a)(1), amended par. (D) generally, substituting "United States observers required under subsection (i) of this section be permitted to be stationed aboard any such vessel and that all of the costs incurred incident to such stationing, including the costs of data editing and entry and observer monitoring, be paid for, in accordance with such subsection, by the owner or operator of the vessel" for "duly authorized United States observers be permitted on board any such vessel and that the United States be reimbursed for the cost of such observers".

Subsec. (c)(4)(D). Pub. L. 97-453, Sec. 2(a)(2), added subpar. (D).

Subsec. (d)(4). Pub. L. 97-453, Sec. 2(a)(3), substituted "may be allocated" for "shall be allocated" after "then such portion or part".

Subsec. (e)(1). Pub. L. 97-453, Sec. 2(a)(4), designated first sentence of existing provisions as subpar. (A), added subpars. (B), (C), and (D), and redesignated former subpars. (A) through (H) as cls. (i) through (viii) of subpar. (E), respectively.

Subsec. (i)(3). Pub. L. 97-453, Sec. 2(a)(5)(A)(i), substituted provision that observers, while stationed aboard foreign fishing vessels, shall carry out such scientific, compliance monitoring, and other functions as the Secretary deems necessary or appropriate to carry out the purposes of this chapter and shall cooperate in carrying out such other scientific programs relating to the conservation and management of living resources as the Secretary deems appropriate, for provision that United States observers, while aboard foreign fishing vessels, were to carry out such scientific and other functions as the Secretary deemed necessary or appropriate to carry out the purposes of this chapter.

Subsec. (i)(6). Pub. L. 97-453, Sec. 2(a)(5)(A)(ii), added par. (6).

Subsec. (j). Pub. L. 97-453, Sec. 2(a)(6), added subsec. (j).

1980 - Subsec. (d). Pub. L. 96-561, Sec. 230, designated existing provision as par. (2), substituted provision prescribing the total allowable level of foreign fishing with respect to any United States fishery for each harvesting season after the 1980 harvesting season as the level representing that portion of the optimum yield of such fishery that will not be harvested by vessels of the United States as determined in accordance with provisions of this chapter, other than those relating to the determination of annual fishing levels, or the annual fishing levels determined pursuant to par. (3) of this section for the harvesting season for provision prescribing the total allowable level of foreign fishing with

respect to any fishery subject to the exclusive fishery management authority of the United States as that portion of the optimum yield of such fishery which will not be harvested by vessels of the United States, as determined in accordance with provisions of this chapter, and added pars. (1), (3), and (4).

Subsec. (e). Pub. L. 96-561, Sec. 231(a), substituted "All such determinations shall be made by the Secretary of State and the Secretary on the basis of" for "In making any such determination, the Secretary of State and the Secretary shall consider", added subpars. (A), (B), (D), and (E), redesignated former subpars. (A), (B), and (D) as (F), (G), and (H), respectively, and in subpar. (C) substituted determination where such nations and the fishing fleets of such nations have cooperated with the United States in enforcement of United States fishing regulations for determination where such nations have cooperated with the United States in enforcement and with respect to conservation and management of fishery resources.

Subsec. (i). Pub. L. 96-561, Sec. 236, added subsec. (i).

1979 - Subsec. (e). Pub. L. 96-61 designated existing provisions as par. (1), redesignated pars. (1) through (4) as subpars. (A) to (D), and added par. (2).

Subsec. (e)(2)(D)(i). Pub. L. 96-118 substituted "unharvested" for "harvested".

1978 - Subsec. (a)(2). Pub. L. 95-354, Sec. 4(1), substituted "(g)" for "(f)".

Subsec. (c)(3). Pub. L. 95-354, Sec. 4(2), substituted "harvest an amount of fish which exceeds" for "exceed".

Subsecs. (f) to (h). Pub. L. 95-354, Sec. 4(3), (4), added subsec. (f), redesignated former subsecs. (f) and (g) as (g) and (h), and in subsec. (h)(1), as so redesignated, set out existing provisions as cls. (A) and (C) and added cl. (B).

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 1983 AMENDMENT

Section 2(b) of Pub. L. 97-453 provided that: "The amendments made by subsection (a)(1) and (5)(A)(ii) (amending this section) shall take effect January 1, 1984."

EFFECTIVE DATE OF 1980 AMENDMENT

Sections 231(b), 238(b) of Pub. L. 96-561, as amended by Pub. L.

104-208, div. A, title I, Sec. 101(a) (title II, Sec. 211(b)), Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that: "The amendments made by subsection (a) (amending this section) shall apply with respect to the 1981 harvesting season and harvesting seasons thereafter (as defined in section 201(d)(1) of the Magnuson-Stevens Fishery Conservation and Management Act, as amended by section 301) (subsec. (d)(1) of this section)."

Sections 237, 238(b) of Pub. L. 96-561, as amended by Pub. L. 104-208, div. A, title I, Sec. 101(a) (title II, Sec. 211(b)), Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that: "The amendment made by section 236 (amending this section) shall take effect October 1, 1981, and shall apply with respect to permits issued under section 204 of the Magnuson-Stevens Fishery Conservation and Management Act (section 1824 of this title) after December 31, 1981."

FOREIGN FISHING FOR ATLANTIC HERRING AND MACKEREL

Pub. L. 104-43, title VIII, Sec. 802, Nov. 3, 1995, 109 Stat. 396, as amended by Pub. L. 104-208, div. A, title I, Sec. 101(a) (title II, Sec. 211(b)), Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that: "Notwithstanding any other provision of law -

"(1) no allocation may be made to any foreign nation or vessel under section 201 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) (16 U.S.C. 1821) in any fishery for which there is not a fishery management plan implemented in accordance with that Act (16 U.S.C. 1801 et seq.); and

"(2) the Secretary of Commerce may not approve the portion of any permit application submitted under section 204(b) of the Act (16 U.S.C. 1824(b)) which proposes fishing by a foreign vessel for Atlantic mackerel or Atlantic herring unless -

"(A) the appropriate regional fishery management council recommends under section 204(b)(5) of that Act that the Secretary approve such fishing, and

"(B) the Secretary of Commerce includes in the permit any conditions or restrictions recommended by the appropriate regional fishery management council with respect to such fishing."

USE OF VESSEL IDENTIFICATION EQUIPMENT

Pub. L. 100-629, Sec. 6, Nov. 7, 1988, 102 Stat. 3287, as amended by Pub. L. 104-208, div. A, title I, Sec. 101(a) (title II, Sec. 211(b)), Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that:

"(a) The Secretary of State, the Secretary of Commerce, and the Secretary of the department in which the Coast Guard is operating, as appropriate, shall exercise their authority under section

201(c)(2)(C) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1821) to require the use of transponders or other such appropriate position-fixing and identification equipment on any vessel other than a vessel of the United States engaged in fishing in the United States Exclusive Economic Zone.

"(b) The Secretary of Commerce, after consultation with the Secretary of Defense, the Secretary of State, and the Secretary of the department in which the Coast Guard is operating shall report to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science and Transportation of the Senate within 180 days after the date of enactment of this Act (Nov. 7, 1988) on the results of their compliance with subsection (a)."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1822, 1824, 1825, 1856, 1857, 1861 of this title.

16 USC Sec. 1822

01/26/98

TITLE 16 - CONSERVATION

CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT

SUBCHAPTER III - FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS

Sec. 1822. International fishery agreements

(a) Negotiations

The Secretary of State -

(1) shall renegotiate treaties as provided for in subsection

(b) of this section;

(2) shall negotiate governing international fishery agreements described in section 1821(c) of this title;

(3) may negotiate boundary agreements as provided for in subsection (d) of this section;

(4) shall, upon the request of and in cooperation with the Secretary, initiate and conduct negotiations for the purpose of entering into international fishery agreements -

(A) which allow fishing vessels of the United States equitable access to fish over which foreign nations assert exclusive fishery management authority, and

(B) which provide for the conservation and management of anadromous species and highly migratory species; and

(5) may enter into such other negotiations, not prohibited by subsection (c) of this section, as may be necessary and appropriate to further the purposes, policy, and provisions of

this chapter.

(b) Treaty renegotiation

The Secretary of State, in cooperation with the Secretary, shall initiate, promptly after April 13, 1976, the renegotiation of any treaty which pertains to fishing within the exclusive economic zone (or within the area that will constitute such zone after February 28, 1977), or for anadromous species or Continental Shelf fishery resources beyond such zone or area, and which is in any manner inconsistent with the purposes, policy, or provisions of this chapter, in order to conform such treaty to such purposes, policy, and provisions. It is the sense of Congress that the United States shall withdraw from any such treaty, in accordance with its provisions, if such treaty is not so renegotiated within a reasonable period of time after April 13, 1976.

(c) International fishery agreements

No international fishery agreement (other than a treaty) which pertains to foreign fishing within the exclusive economic zone (or within the area that will constitute such zone after February 28, 1977), or for anadromous species or Continental Shelf fishery resources beyond such zone or area -

(1) which is in effect on June 1, 1976, may thereafter be renewed, extended, or amended; or

(2) may be entered into after May 31, 1976;

by the United States unless it is in accordance with the provisions of section 1821(c) of this title or section 1824(e) of this title.

(d) Boundary negotiations

The Secretary of State, in cooperation with the Secretary, may initiate and conduct negotiations with any adjacent or opposite foreign nation to establish the boundaries of the exclusive economic zone of the United States in relation to any such nation.

(e) Highly migratory species agreements

(1) Evaluation

The Secretary of State, in cooperation with the Secretary, shall evaluate the effectiveness of each existing international fishery agreement which pertains to fishing for highly migratory species. Such evaluation shall consider whether the agreement provides for -

(A) the collection and analysis of necessary information for effectively managing the fishery, including but not limited to information about the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the catch and bycatch levels in the fishery, and the present and probable future condition of any stock of fish involved;

(B) the establishment of measures applicable to the fishery which are necessary and appropriate for the conservation and

management of the fishery resource involved;

(C) equitable arrangements which provide fishing vessels of the United States with (i) access to the highly migratory species that are the subject of the agreement and (ii) a portion of the allowable catch that reflects the traditional participation by such vessels in the fishery;

(D) effective enforcement of conservation and management measures and access arrangements throughout the area of jurisdiction; and

(E) sufficient and dependable funding to implement the provisions of the agreement, based on reasonable assessments of the benefits derived by participating nations.

(2) Access negotiations

The Secretary of State, in cooperation with the Secretary, shall initiate negotiations with respect to obtaining access for vessels of the United States fishing for tuna species within the exclusive economic zones of other nations on reasonable terms and conditions.

(3) Reports

The Secretary of State shall report to the Congress -

(A) within 12 months after November 28, 1990, on the results of the evaluation required under paragraph (1), together with recommendations for addressing any inadequacies identified; and

(B) within six months after November 28, 1990, on the results of the access negotiations required under paragraph (2).

(4) Negotiation

The Secretary of State, in consultation with the Secretary, shall undertake such negotiations with respect to international fishery agreements on highly migratory species as are necessary to correct inadequacies identified as a result of the evaluation conducted under paragraph (1).

(5) South Pacific tuna treaty

It is the sense of the Congress that the United States Government shall, at the earliest opportunity, begin negotiations for the purpose of extending the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, signed at Port Moresby, Papua New Guinea, April 2, 1987, and its (FOOTNOTE 1) Annexes, Schedules, and implementing agreements for an additional term of 10 years on terms and conditions at least as favorable to vessels of the United States and the United States Government.

(FOOTNOTE 1) So in original.

(f) Nonrecognition

It is the sense of the Congress that the United States Government shall not recognize the claim of any foreign nation to an exclusive economic zone (or the equivalent) beyond such nation's territorial

sea, to the extent that such sea is recognized by the United States, if such nation -

(1) fails to consider and take into account traditional fishing activity of fishing vessels of the United States;

(2) fails to recognize and accept that highly migratory species are to be managed by applicable international fishery agreements, whether or not such nation is a party to any such agreement; or

(3) imposes on fishing vessels of the United States any conditions or restrictions which are unrelated to fishery conservation and management.

(g) Fishery agreement with Russia

(1) The Secretary of State, in consultation with the Secretary, is authorized to negotiate and conclude a fishery agreement with Russia of a duration of no more than 3 years, pursuant to which -

(A) Russia will give United States fishing vessels the opportunity to conduct traditional fisheries within waters claimed by the United States prior to the conclusion of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, west of the maritime boundary, including the western special area described in Article 3(2) of the Agreement;

(B) the United States will give fishing vessels of Russia the opportunity to conduct traditional fisheries within waters claimed by the Union of Soviet Socialist Republics prior to the conclusion of the Agreement referred to in subparagraph (A), east of the maritime boundary, including the eastern special areas described in Article 3(1) of the Agreement;

(C) catch data shall be made available to the government of the country exercising fisheries jurisdiction over the waters in which the catch occurred; and

(D) each country shall have the right to place observers on board vessels of the other country and to board and inspect such vessels.

(2) Vessels operating under a fishery agreement negotiated and concluded pursuant to paragraph (1) shall be subject to regulations and permit requirements of the country in whose waters the fisheries are conducted only to the extent such regulations and permit requirements are specified in that agreement.

(3) The Secretary of Commerce may promulgate such regulations, in accordance with section 553 of title 5, as may be necessary to carry out the provisions of any fishery agreement negotiated and concluded pursuant to paragraph (1).

(h) Bycatch reduction agreements

(1) The Secretary of State, in cooperation with the Secretary, shall seek to secure an international agreement to establish standards and measures for bycatch reduction that are comparable to

the standards and measures applicable to United States fishermen for such purposes in any fishery regulated pursuant to this chapter for which the Secretary, in consultation with the Secretary of State, determines that such an international agreement is necessary and appropriate.

(2) An international agreement negotiated under this subsection shall be -

(A) consistent with the policies and purposes of this chapter;
and

(B) subject to approval by Congress under section 1823 of this title.

(3) Not later than January 1, 1997, and annually thereafter, the Secretary, in consultation with the Secretary of State, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a report describing actions taken under this subsection.

(Pub. L. 94-265, title II, Sec. 202, Apr. 13, 1976, 90 Stat. 339; Pub. L. 99-659, title I, Sec. 101(c)(2), Nov. 14, 1986, 100 Stat. 3707; Pub. L. 101-627, title I, Sec. 105(a), 120(a), Nov. 28, 1990, 104 Stat. 4439, 4459; Pub. L. 102-251, title III, Sec. 301(e), Mar. 9, 1992, 106 Stat. 63; Pub. L. 104-297, title I, Sec. 105(b), Oct. 11, 1996, 110 Stat. 3564.)

AMENDMENT OF SECTION

Pub. L. 102-251, title III, Sec. 301(e)(1), (2), 308, Mar. 9, 1992, 106 Stat. 63, 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, this section is amended:

(1) in subsection (b), (A) by inserting "or special areas" immediately after "February 28, 1977)" and (B) by striking "such zone or area" and inserting in lieu thereof "such zone or areas"; and

(2) in subsection (c), (A) by inserting "or special areas" immediately after "February 28, 1977)" and (B) by striking "such zone or area" and inserting in lieu thereof "such zone or areas".

AMENDMENTS

1996 - Subsec. (c). Pub. L. 104-297, Sec. 105(b)(1), inserted

before period at end "or section 1824(e) of this title".

Subsec. (h). Pub. L. 104-297, Sec. 105(b)(2), added subsec. (h).

1992 - Subsec. (g). Pub. L. 102-251, Sec. 301(e)(3), added subsec. (g).

1990 - Subsec. (e). Pub. L. 101-627, Sec. 105(a), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 101-627, Sec. 120(a), substituted "an exclusive economic" for "a exclusive economic".

Pub. L. 101-627, Sec. 105(a), redesignated former subsec. (e) as (f).

1986 - Subsecs. (b) to (e). Pub. L. 99-659 substituted "exclusive economic zone" for "fishery conservation zone" wherever appearing.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 301(e)(3) of Pub. L. 102-251 effective Mar. 9, 1992, and amendment by section 301(e)(1), (2), of 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.

CERTIFICATE OF LEGAL ORIGIN FOR ANADROMOUS FISH PRODUCTS

Section 801 of Pub. L. 101-627 provided that:

"(a) Negotiations. - Within 60 days after the date of enactment of this Act (Nov. 28, 1990), the Secretary of State shall commence negotiations with nations which import or export anadromous fish or anadromous fish products for the purpose of securing general agreement among such nations to implement effective measures to prohibit international trade in anadromous fish or anadromous fish products unless such fish or fish products are accompanied by a valid certificate of legal origin attesting that the fish or fish product was lawfully harvested -

"(1) within the jurisdiction of a nation having naturally occurring or artificially established anadromous fish populations of the same species as the imported or exported product; or

"(2) on the high seas according to an international agreement among nations with jurisdiction over more than 1 percent of the stocks of anadromous fish being so harvested.

"(b) Issuance of Certificates. - For the purposes of subsection (a), a valid certificate of legal origin may be issued only by a nation which -

"(1) is the nation having jurisdiction over the vessel or

other means by which the fish or fish product was harvested; and

"(2) maintains regular harvests of anadromous fish in a manner consistent with the criteria for lawful harvests set out in subsection (a).

"(c) Bilateral or Multilateral Agreements. - Efforts undertaken by the Secretary of State pursuant to subsection (a) may, at the discretion of the Secretary, be directed toward achieving either bilateral or multilateral agreements, including trade agreements, whichever the Secretary determines to be most likely to result in the earliest possible date or dates of agreement by those nations which individually have in excess of \$1,000,000, or the equivalent, in import or export trade in anadromous fish and anadromous fish products.

"(d) Regulations. - The Secretary of Commerce shall, within 180 days after the date of enactment of this Act (Nov. 28, 1990), promulgate regulations providing for -

"(1) the issuance of certificates of legal origin pursuant to agreements under subsection (a) for anadromous fish and anadromous fish products legally harvested by vessels of the United States;

"(2) the delegation of the authority to issue certificates of legal origin to States, territories, or possessions of the United States which the Secretary of Commerce determines to have implemented a program which is sufficient to accomplish the purposes of subsection (a); and

"(3) an orderly transition to such regulations, sufficient to ensure that United States commerce in anadromous fish and anadromous fish products is not unduly disrupted.

"(e) Report Required. - The Secretary of Commerce, after consultation with the Secretary of the Treasury, shall, within 180 days after the date of enactment of this Act (Nov. 28, 1990), submit to the Congress a report -

"(1) making recommendations as to the need for the adoption of United States import and export restrictions on anadromous fish and anadromous fish products consistent with subsection (a); and

"(2) identifying, evaluating, and making recommendations regarding any specific statutory or regulatory changes that may be necessary for the adoption of such restrictions.

"(f) Certification. - If, at any time following the promulgation of the regulations required by subsection (d), the Secretary of Commerce finds that any nation is engaging in trade in unlawfully taken anadromous fish or anadromous fish products, the Secretary shall certify that fact to the President, which certification shall be deemed to be a certification for the purposes of section 8(a)(1) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)(1))."

DRIFTNET IMPACT MONITORING, ASSESSMENT, AND CONTROL

Pub. L. 100-220, title IV, Dec. 29, 1987, 101 Stat. 1477, as amended by Pub. L. 104-208, div. A, title I, Sec. 101(a) (title II, Sec. 211(b)), Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that:

"SEC. 4001. SHORT TITLE.

"This title may be cited as the 'Driftnet Impact Monitoring, Assessment, and Control Act of 1987'.

"SEC. 4002. FINDINGS.

"The Congress finds that -

"(1) the use of long plastic driftnets is a fishing technique that may result in the entanglement and death of enormous numbers of target and nontarget marine resources in the waters of the North Pacific Ocean, including the Bering Sea;

"(2) there is a pressing need for detailed and reliable information on the number of marine resources that become entangled and die in actively fished driftnets and in driftnets that are lost, abandoned, or discarded; and

"(3) increased efforts are necessary to monitor, assess, and reduce the adverse impacts of driftnets.

"SEC. 4003. DEFINITIONS.

"As used in this title -

"(1) Driftnet. - The term 'driftnet' means a gillnet composed of a panel of plastic webbing one and one-half miles or more in length.

"(2) Driftnet fishing. - The term 'driftnet fishing' means a fish-harvesting method in which a driftnet is placed in water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.

"(3) Exclusive economic zone of the United States. - The term 'exclusive economic zone of the United States' means the zone defined in section 3(6) (now 3(11)) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802(b) (1802(11))).

"(4) Marine resources. - The term 'marine resources' includes fish, shellfish, marine mammals, seabirds, and other forms of marine life or waterfowl.

"(5) Marine resources of the United States. - The term 'marine resources of the United States' means -

"(A) marine resources found in, or which breed within, areas subject to the jurisdiction of the United States, including the exclusive economic zone of the United States; and

"(B) species of fish, wherever found, that spawn in the fresh or estuarine waters of the United States.

"(6) Secretary. - The term 'Secretary' means the Secretary of Commerce.

"SEC. 4004. MONITORING AGREEMENTS.

"(a) Negotiations. - The Secretary, through the Secretary of State and in consultation with the Secretary of the Interior, shall immediately initiate, negotiations with each foreign government that conducts, or authorizes its nationals to conduct, driftnet fishing that results in the taking of marine resources of the United States in waters of the North Pacific Ocean outside of the exclusive economic zone and territorial sea of any nation, for the purpose of entering into agreements for statistically reliable cooperative monitoring and assessment of the numbers of marine resources of the United States killed and retrieved, discarded, or lost by the foreign government's driftnet fishing vessels. Such agreements shall provide for -

"(1) the use of a sufficient number of vessels from which scientists of the United States and the foreign governments may observe and gather statistically reliable information; and

"(2) appropriate methods for sharing equally the costs associated with such activities.

"(b) Report. - The Secretary, in consultation with the Secretary of State, shall provide to the Congress not later than 1 year after the date of enactment of this Act (Dec. 29, 1987) a full report on the results of negotiations under this section.

"SEC. 4005. IMPACT REPORT.

"(a) In General. - The Secretary shall provide to the Congress within 1 year after the date of the enactment of this Act (Dec. 29, 1987), and at such other times thereafter as the Secretary considers appropriate, a report identifying the nature, extent, and effects of driftnet fishing in waters of the North Pacific Ocean on marine resources of the United States. The report shall include the best available information on -

"(1) the number and flag state of vessels involved;

"(2) the areas fished;

"(3) the length, width, and mesh size of driftnets used;

"(4) the number of marine resources of the United States killed by such fishing;

"(5) the effect of seabird mortality, as determined by the Secretary of the Interior, on seabird populations; and

"(6) any other information the Secretary considers appropriate.

"(b) Information From Foreign Governments. - The Secretary, through the Secretary of State, shall -

"(1) request relevant foreign governments to provide the information described in subsection (a), and

"(2) include in a report under this section the information so provided and an evaluation of the adequacy and reliability of such information.

"SEC. 4006. ENFORCEMENT AGREEMENTS.

"(a) Negotiations. - The Secretary shall immediately initiate, through the Secretary of State and in consultation with the Secretary of the Department in which the Coast Guard is operating negotiations with each foreign government that conducts, or authorizes its nationals to conduct, driftnet fishing that results in the taking of marine resources of the United States in waters of the North Pacific Ocean outside of the exclusive economic zone and territorial sea of any nation, for the purpose of entering into agreements for effective enforcement of laws, regulations, and agreements applicable to the location, season, and other aspects of the operations of the foreign government's driftnet fishing vessels. Such agreements shall include measures for -

"(1) the effective monitoring and detection of violations;

"(2) the collection and presentation of such evidence of violations as may be necessary for the successful prosecution of such violations by the responsible authorities;

"(3) reporting to the United States of penalties imposed by the foreign governments for violations; and

"(4) appropriate methods for sharing equally the costs associated with such activities.

"(b) Certification for Purposes of Fishermen's Protective Act of 1967. - If the Secretary, in consultation with the Secretary of State, determines that a foreign government has failed, within 18 months after the date of the enactment of this Act (Dec. 29, 1987), to enter into and implement an agreement under subsection (a) or section 4004(a) that is adequate, the Secretary shall certify such fact to the President, which certification shall be deemed to be a certification for the purposes of section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)).

"SEC. 4007. EVALUATIONS AND RECOMMENDATIONS.

"(a) Marking, Registry, and Identification System. - The Secretary shall evaluate, in consultation with officials of other Federal agencies and such other persons as may be appropriate, the feasibility of and develop recommendations for the establishment of a driftnet marking, registry, and identification system to provide a reliable method for the determination of the origin by vessel, of lost, discarded, or abandoned driftnets and fragments of driftnets. In conducting such evaluation, the Secretary shall consider the adequacy of existing driftnet identification systems of foreign nations and the extent to which these systems achieve the objectives of this title.

"(b) Alternative Driftnet Materials. - The Secretary, in consultation with such other persons as may be appropriate, shall evaluate the feasibility of, and develop appropriate recommendations for, the use of alternative materials in driftnets

for the purpose of increasing the rate of decomposition of driftnets that are discarded or lost at sea.

"(c) Driftnet Bounty System. - The Secretary, in consultation with such other persons as may be appropriate, shall evaluate the feasibility of and develop appropriate recommendations for the implementation of a driftnet bounty system to pay persons who retrieve from the exclusive economic zone and deposit with the Secretary lost, abandoned, and discarded driftnet and other plastic fishing material.

"(d) Driftnet Fishing Vessel Tracking System. - The Secretary, in consultation with such other persons as may be appropriate, shall evaluate the feasibility of, and develop appropriate recommendations for, the establishment of a cooperative driftnet fishing vessel tracking system to facilitate efforts to monitor the location of driftnet fishing vessels.

"(e) Report. - The Secretary shall transmit to the Congress not later than 18 months after the date of the enactment of this Act (Dec. 29, 1987) a report setting forth -

"(1) the evaluations and recommendations developed under subsections (a), (b), (c), and (d);

"(2) the most effective and appropriate means of implementing such recommendations;

"(3) any need for further research and development efforts and the estimated cost and time required for completion of such efforts; and

"(4) any need for legislation to provide authority to carry out such recommendations.

"SEC. 4008. CONSTRUCTION WITH OTHER LAWS.

"This title (this note) shall not serve or be construed to expand or diminish the sovereign rights of the United States, as stated by Presidential Proclamation Numbered 5030, dated March 10, 1983 (16 U.S.C. 1453 note), and reflected in existing law on the date of the enactment of this Act (Dec. 29, 1987).

"SEC. 4009. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to the Department of Commerce and the Department of State, such sums as may be necessary to carry out the purposes of this title."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1821 of this title.

16 USC Sec. 1823

01/26/98

TITLE 16 - CONSERVATION

CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT

SUBCHAPTER III - FOREIGN FISHING AND INTERNATIONAL FISHERY

AGREEMENTS

Sec. 1823. Congressional oversight of international fishery agreements

(a) In general

No governing international fishery agreement, bycatch reduction agreement, or Pacific Insular Area fishery agreement shall become effective with respect to the United States before the close of the first 120 days (excluding any days in a period for which the Congress is adjourned sine die) after the date on which the President transmits to the House of Representatives and to the Senate a document setting forth the text of such governing international fishery agreement, bycatch reduction agreement, or Pacific Insular Area fishery agreement. A copy of the document shall be delivered to each House of Congress on the same day and shall be delivered to the Clerk of the House of Representatives, if the House is not in session, and to the Secretary of the Senate, if the Senate is not in session.

(b) Referral to committees

Any document described in subsection (a) of this section shall be immediately referred in the House of Representatives to the Committee on Merchant Marine and Fisheries, and in the Senate to the Committees on Commerce, Science, and Transportation and on Foreign Relations.

(c) Congressional procedures

(1) Rules of the House of Representatives and Senate

The provisions of this section are enacted by the Congress -

(A) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of fishery agreement resolutions described in paragraph (2), and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, and in the same manner and to the same extent as in the case of any other rule of that House.

(2) "Fishery agreement resolution" defined

For purposes of this subsection, the term "fishery agreement resolution" refers to a joint resolution of either House of Congress -

(A) the effect of which is to prohibit the entering into force and effect of any governing international fishery agreement, bycatch reduction agreement, or Pacific Insular Area

fishery agreement the text of which is transmitted to the Congress pursuant to subsection (a) of this section; and

(B) which is reported from the Committee on Merchant Marine and Fisheries of the House of Representatives or the Committee on Commerce, Science, and Transportation or the Committee on Foreign Relations of the Senate, not later than 45 days after the date on which the document described in subsection (a) of this section relating to that agreement is transmitted to the Congress.

(3) Placement on calendar

Any fishery agreement resolution upon being reported shall immediately be placed on the appropriate calendar.

(4) Floor consideration in the House

(A) A motion in the House of Representatives to proceed to the consideration of any fishery agreement resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate in the House of Representatives on any fishery agreement resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit any fishery agreement resolution or to move to reconsider the vote by which any fishery agreement resolution is agreed to or disagreed to.

(C) Motions to postpone, made in the House of Representatives with respect to the consideration of any fishery agreement resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(D) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to any fishery agreement resolution shall be decided without debate.

(E) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of any fishery agreement resolution shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions in similar circumstances.

(5) Floor consideration in the Senate

(A) A motion in the Senate to proceed to the consideration of any fishery agreement resolution shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate in the Senate on any fishery agreement resolution

and on all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(C) Debate in the Senate on any debatable motion or appeal in connection with any fishery agreement resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover of the motion or appeal and the manager of the resolution, except that if the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. The majority leader and the minority leader, or either of them, may allot additional time to any Senator during the consideration of any debatable motion or appeal, from time under their control with respect to the applicable fishery agreement resolution.

(D) A motion in the Senate to further limit debate is not debatable. A motion to recommit any fishery agreement resolution is not in order.

(Pub. L. 94-265, title II, Sec. 203, Apr. 13, 1976, 90 Stat. 340; Pub. L. 103-437, Sec. 6(x), Nov. 2, 1994, 108 Stat. 4587; Pub. L. 104-297, title I, Sec. 105(c), Oct. 11, 1996, 110 Stat. 3564.)

AMENDMENTS

1996 - Pub. L. 104-297, Sec. 105(c)(1), substituted "international" for "governing international" in section catchline.

Subsec. (a). Pub. L. 104-297, Sec. 105(c)(2), (3), inserted ", bycatch reduction agreement, or Pacific Insular Area fishery agreement" after "international fishery agreement" in two places and substituted "120 days (excluding any days in a period for which the Congress is adjourned sine die)" for "60 calendar days of continuous session of the Congress".

Subsec. (c). Pub. L. 104-297, Sec. 105(c)(4), (5), redesignated subsec. (d) as (c) and struck out heading and text of former subsec. (c). Text read as follows: "For purposes of subsection (a) of this section -

"(1) continuity of session is broken only by an adjournment of Congress sine die; and

"(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period."

Subsec. (c)(2)(A). Pub. L. 104-297, Sec. 105(c)(6), substituted "agreement, bycatch reduction agreement, or Pacific Insular Area fishery agreement" for "agreement".

Subsec. (d). Pub. L. 104-297, Sec. 105(c)(5), redesignated subsec. (d) as (c).

1994 - Subsec. (b). Pub. L. 103-437, Sec. 6(x)(1), substituted "Commerce, Science, and Transportation and on" for "Commerce and".

Subsec. (d)(2)(B). Pub. L. 103-437, Sec. 6(x)(2), substituted "Commerce, Science, and Transportation" for "Commerce".

SHORT TITLE OF 1995 AMENDMENT

Pub. L. 104-43, title V, Sec. 501, Nov. 3, 1995, 109 Stat. 391, provided that: "This title (amending provisions set out below) may be cited as the 'Sea of Okhotsk Fisheries Enforcement Act of 1995'."

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. Committee on Merchant Marine and Fisheries of House of Representatives treated as referring to Committee on Resources of House of Representatives in case of provisions relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography by section 1(b)(3) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

GOVERNING INTERNATIONAL FISHERY AGREEMENT WITH REPUBLIC OF ESTONIA

Pub. L. 102-587, title I, Sec. 1001, Nov. 4, 1992, 106 Stat. 5039, provided that the governing international fishery agreement between the Government of the United States of America and the Government of the Republic of Estonia, was approved by Congress as a governing international fishery agreement for purposes of this chapter and was to enter into force and effect with respect to the United States on Nov. 4, 1992.

FISHERIES ENFORCEMENT IN CENTRAL BERING SEA AND CENTRAL SEA OF OKHOTSK

Pub. L. 102-582, title III, Nov. 2, 1992, 106 Stat. 4906, as amended by Pub. L. 104-43, title V, Sec. 502, Nov. 3, 1995, 109 Stat. 391; Pub. L. 104-208, div. A, title I, Sec. 101(a) (title II, Sec. 211(b)), Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that:

"SEC. 301. SHORT TITLE.

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

"SEC. 302. PROHIBITION APPLICABLE TO UNITED STATES VESSELS AND NATIONALS.

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

"(b) Civil Penalties and Permit Sanctions. - A violation of this section shall be subject to civil penalties and permit sanctions under section 308 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1858).

"SEC. 303. PORT PRIVILEGES DENIAL FOR FISHING IN CENTRAL BERING SEA.

"(a) Denial of Port Privileges. - The Secretary of the Treasury shall, after December 31, 1992, in accordance with recognized principles of international law -

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

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

"(b) Publication of List. - Not later than forty-five days after the date of enactment of this Act (Nov. 2, 1992), the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall publish in the Federal Register a list of nations whose nationals or vessels conduct fishing operations in the Central Bering Sea, except where such fishing operations are in accordance with an international fishery agreement to which the United States and the Russian Federation are parties. The Secretary shall publish as an addendum to the list the name of each vessel documented under the laws of each listed nation which conducts fishing operations in the Central Bering Sea. A revised list shall be published whenever the list is no longer accurate, except that a nation may not be removed from the list unless -

"(1) the nationals and vessels of that nation have not conducted fishing operations in the Central Bering Sea for the previous ninety days and the nation has committed, through a bilateral agreement with the United States or in any other manner acceptable to the Secretary of Commerce, not to permit its nationals or vessels to resume such fishing operations; or

"(2) the nationals and vessels of that nation are conducting fishing operations in the Central Bering Sea that are in accordance with an international fishery agreement to which the

United States and the Russian Federation are parties.

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

"SEC. 304. DURATION OF PORT PRIVILEGES DENIAL.

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

"SEC. 305. RESTRICTION ON FISHING IN UNITED STATES EXCLUSIVE ECONOMIC ZONE.

"(a) Regulations. - Within one hundred and eighty days after the date of enactment of this Act (Nov. 2, 1992), after notice and public comment, the Secretary of Commerce shall issue regulations, under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) and any other applicable law, to prohibit

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

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

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

"(b) Requirement for Submission of Documents. - The Secretary of Commerce shall require under any regulations issued under subsection (a) the submission of any affidavits, financial statements, corporate agreements, and other documents that the Secretary of Commerce determines, after notice and public comment, are necessary to ensure that all vessels and processing facilities are in compliance with this section.

"(c) Appeals; Duration of Prohibitions. - The regulations issued under subsection (a) shall -

"(1) establish procedures for a person to appeal a decision to

impose a prohibition under subsection (a) on a vessel or processing facility owned or controlled by that person; and

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

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

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

"SEC. 306. DEFINITIONS.

"In this title, the following definitions apply:

"(1) Central bering sea. - The term 'Central Bering Sea' means the central Bering Sea area which is more than two hundred nautical miles seaward of the baselines from which the breadth of the territorial seas of the United States and the Russian Federation are measured.

"(2) Central sea of okhotsk. - The term 'Central Sea of Okhotsk' means the Central Sea of Okhotsk area which is more than two hundred nautical miles seaward of the baseline from which the breadth of the territorial sea of the Russian Federation is measured.

"(3) Fishing vessel. - The term 'fishing vessel' means any vessel which is used for -

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

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

"(4) Owns or controls. - When used in reference to a vessel or processing facility -

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

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

"(5) Permitted fishing vessel. - The term 'permitted fishing vessel' means any fishing vessel that is subject to a permit issued by the Secretary of Commerce under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

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

"(7) Processing facility. - The term 'processing facility' means any fish processing establishment or fish processing vessel that receives unprocessed fish.

"SEC. 307. TERMINATION.

"This title shall cease to have force and effect after the date that is seven years after the date of enactment of this Act (Nov. 2, 1992), except that any proceeding with respect to violations of section 302 occurring prior to such termination date shall be conducted as if that section were still in effect."

NORTH PACIFIC AND BERING SEA FISHERIES ADVISORY BODY

Pub. L. 100-629, Sec. 5, Nov. 7, 1988, 102 Stat. 3287, provided that:

"(a) In General. - The Secretary of State shall establish an advisory body on the fisheries of the North Pacific and the Bering Sea, which shall advise the United States representative to the International Consultative Committee created in accordance with Article XIV of the governing international fishery agreement entered into between the United States and the Union of Soviet Socialist Republics, as contained in the message to Congress from the President of the United States dated June 22, 1988.

"(b) Membership. -

"(1) In General. - The advisory body established pursuant to this section shall consist of 12 members, as follows:

"(A) The Director of the Department of Fisheries of the State of Washington.

"(B) The Commission of the Department of Fish and Game of the State of Alaska.

"(C) Five members appointed by the Secretary of State from among persons nominated by the Governor of Alaska on the basis of their knowledge and experience in commercial harvesting, processing, or marketing of fishery resources.

"(D) Five members appointed by the Secretary of State from among persons nominated by the Governor of Washington on the basis of their knowledge and experience in commercial harvesting, processing, or marketing of fishery resources.

"(2) Nominations. - The Governor of Alaska and the Governor of Washington shall each nominate 10 persons for purposes of paragraph (1).

"(c) Pay. - Members of the advisory body established pursuant to this section shall receive no pay by reason of their service as members of the advisory body.

"(d) Exemption From Federal Advisory Committee Act. - The Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.) shall not apply to an advisory body established pursuant to this section."

GOVERNING INTERNATIONAL FISHERY AGREEMENT WITH RUSSIAN FEDERATION

Pub. L. 103-206, title VII, Sec. 701, Dec. 20, 1993, 107 Stat. 2446, as amended by Pub. L. 104-208, div. A, title I, Sec. 101(a) (title II, Sec. 211(b)), Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that: "The Agreement between the Government of the United States of America and the Government of the Russian Federation on Mutual Fisheries Relations which was entered into on May 31, 1988, and which expired by its terms on October 28, 1993, may be brought into force again for the United States through an exchange of notes between the United States of America and the Russian Federation and may remain in force and effect on the part of the United States until May 1, 1994, and may be amended or extended by a subsequent agreement to which section 203 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1823) applies."

Pub. L. 100-629, Sec. 1, Nov. 7, 1988, 102 Stat. 3286, provided that the governing international fishery agreement entered into between the Government of the United States and the Government of the Union of Soviet Socialist Republics was approved by Congress and was to enter into force and effect with respect to the United States on Nov. 7, 1988.

GOVERNING INTERNATIONAL FISHERY AGREEMENT WITH GERMAN DEMOCRATIC REPUBLIC

Pub. L. 100-350, Sec. 1, June 27, 1988, 102 Stat. 660, provided that extension of governing international fishery agreement between the Government of the United States of America and the Government of the German Democratic Republic was approved by Congress as a governing international fishery agreement for purposes of this chapter, and was to enter into force and effect with respect to the United States on June 27, 1988.

GOVERNING INTERNATIONAL FISHERY AGREEMENTS WITH ICELAND AND THE EUROPEAN ECONOMIC COMMUNITY

Pub. L. 98-623, title I, Nov. 8, 1984, 98 Stat. 3394, as amended by Pub. L. 104-208, div. A, title I, Sec. 101(a) (title II, Sec. 211(b)), Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that:

"Notwithstanding section 203 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1823) (this section) -

"(1) the governing international fishery agreement between the Government of the United States and the European Economic Community Concerning Fisheries Off the Coasts of the United States, as contained in the Message to Congress from the President of the United States dated August 27, 1984, is hereby approved by Congress as a governing international fishery agreement for purposes of that Act (this chapter), and may enter into force with respect to the United States in accordance with the terms of Article XIX of the agreement after the date of the enactment of this title (Nov. 8, 1984), upon signature of the agreement by both parties; and

"(2) the governing international fishery agreement between the Government of the United States and the Government of the Republic of Iceland Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated September 29, 1984, is hereby approved by Congress as a governing international fishery agreement for purposes of that Act (this chapter), and may enter into force with respect to the United States in accordance with the terms of Article XVI of the agreement after the date of the enactment of this title (Nov. 8, 1984)."

GOVERNING INTERNATIONAL FISHERY AGREEMENT WITH FAROE ISLANDS AND DENMARK

Pub. L. 98-498, title IV, Sec. 440, Oct. 19, 1984, 98 Stat. 2310, as amended by Pub. L. 104-208, div. A, title I, Sec. 101(a) (title II, Sec. 211(b)), Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that: "Notwithstanding section 203 of the Magnuson-Stevens Fishery Conservation and Management Act of 1976 (this section), the Governing International Fishery Agreement between the Government of the United States of America of the One Part and the Home Government of the Faroe Islands and the Government of Denmark of the Other Part Concerning Faroese Fishing in Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated July 13, 1984 -

"(1) is approved by Congress as a governing international fishery agreement for purposes of that Act (this chapter); and

"(2) may enter into force with respect to the United States in accordance with the terms of Article XVI of the Agreement following the enactment of this title (Oct. 19, 1984)."

GOVERNING INTERNATIONAL FISHERY AGREEMENT WITH JAPAN

Pub. L. 101-224, Sec. 7, Dec. 12, 1989, 103 Stat. 1907, provided that the governing international fishery agreement entered into

between the Government of the United States and the Government of Japan was approved by Congress and was to enter into force and effect with respect to the United States on Dec. 12, 1989.

Pub. L. 100-220, title I, Sec. 1001, Dec. 29, 1987, 101 Stat. 1459, provided that the governing international fishery agreement between the Government of the United States of America and the Government of Japan Concerning Fisheries Off the Coasts of the United States was approved by Congress as a governing international fishery agreement for the purposes of this chapter, and was to enter into force and effect with respect to the United States on Dec. 29, 1987.

Pub. L. 97-389, title IV, Sec. 401, Dec. 29, 1982, 96 Stat. 1954, provided that the governing international fishery agreement entered into between the Government of the United States and the Government of Japan pursuant to this chapter, signed at Washington on Sept. 10, 1982, was approved, and was effective on Jan. 1, 1983.

GOVERNING INTERNATIONAL FISHERY AGREEMENT WITH SPAIN

Pub. L. 97-389, title IV, Sec. 402, Dec. 29, 1982, 96 Stat. 1954, provided for approval of the governing international fishery agreement entered into between the Government of the United States and the Government of Spain pursuant to this chapter.

GOVERNING INTERNATIONAL FISHERY AGREEMENT WITH PORTUGAL

Pub. L. 96-561, title I, Sec. 145, title II, Sec. 238(b), Dec. 22, 1980, 94 Stat. 3287, 3300, provided that the governing international fishery agreement between the Government of the United States of America and the Government of Portugal Concerning Fisheries Off the Coasts of the United States was approved by Congress as a governing international fishery agreement for the purposes of this chapter, and was to enter into force and effect with respect to the United States on Dec. 22, 1980.

EXTENSION OF INTERNATIONAL FISHERY AGREEMENTS

Pub. L. 100-66, Sec. 1, July 10, 1987, 101 Stat. 384, provided that the governing international fishery agreement entered into between the Government of the United States and the Government of the Republic of Korea on July 26, 1982, was to remain in force and effect with respect to the United States until the closing date of the sixty-day period referred to in subsec. (a) of this section that applied with respect to any new governing international fishery agreement between the United States and the Republic of Korea that was transmitted to the Congress under subsec. (a) of this section after May 1, 1987, or Nov. 1, 1987, whichever was earlier.

Pub. L. 98-364, title I, Sec. 106, July 17, 1984, 98 Stat. 442,

provided that upon certification by Secretary of State to President of the Senate and Speaker of the House of Representatives that a new governing international fishery agreement in conformity with this chapter had been negotiated by the United States and the European Economic Community, the existing governing international fishery agreement referred to in section 2(a)(7) of Pub. L. 95-6, formerly set out below, could be extended or reinstated and could be in force and effect with respect to the United States, for the period of time ending on the earlier of (1) the effective date of the new governing international fishery agreement, or (2) Sept. 30, 1984.

Pub. L. 97-212, Sec. 10(b), June 30, 1982, 96 Stat. 148, provided that the governing international fishery agreements referred to in section 2(a)(9) and (10) of Pub. L. 95-6, formerly set out below, were to be extended, and were to be in force and effect with respect to the United States, for the period of time ending on the deadline for completion of congressional review, pursuant to subsec. (a) of this section, of any new governing international fishery agreement signed, on or before July 31, 1982, by the United States and the respective foreign government that was a party to the agreement in question, or July 31, 1982, if the United States and the respective foreign government that was a party to the agreement in question failed to sign a new governing international fishery agreement on or before that date.

CONGRESSIONAL APPROVAL OF CERTAIN GOVERNING INTERNATIONAL FISHERY AGREEMENTS

Pub. L. 95-6, Sec. 2, Feb. 21, 1977, 91 Stat. 15, as amended by Pub. L. 95-8, Sec. 1, Mar. 3, 1977, 91 Stat. 18; Pub. L. 95-219, Sec. 1, Dec. 28, 1977, 91 Stat. 1613; Pub. L. 96-561, title II, Sec. 238(b), Dec. 22, 1980, 94 Stat. 3300; Pub. L. 97-212, Sec. 10(a), June 30, 1982, 96 Stat. 148; Pub. L. 98-44, title I, Sec. 105, July 12, 1983, 97 Stat. 217; Pub. L. 98-364, title I, Sec. 105, July 17, 1984, 98 Stat. 442, provided for the approval by Congress, as a governing international fishery agreement for purposes of this chapter, of the governing international fishery agreement between -

- (1) the Government of the United States and the Government of the People's Republic of Bulgaria Concerning Fisheries Off the Coasts of the United States;
- (2) the Government of the United States and the Government of the Socialist Republic of Romania Concerning Fisheries Off the Coasts of the United States;
- (3) the Government of the United States and the Government of the Republic of China Concerning Fisheries Off the Coasts of the United States;

(4) the Government of the United States and the Government of the German Democratic Republic Concerning Fisheries Off the Coasts of the United States;

(5) the Government of the United States and the Government of the Union of Soviet Socialist Republics Concerning Fisheries Off the Coasts of the United States;

(6) the Government of the United States and the Government of the Polish People's Republic Concerning Fisheries Off the Coasts of the United States;

(7) the Government of the United States and the European Economic Community Concerning Fisheries Off the Coasts of the United States;

(8) the Government of the United States and the Government of Japan Concerning Fisheries Off the Coasts of the United States (for 1977);

(9) the Government of the United States and the Government of the Republic of Korea Concerning Fisheries Off the Coasts of the United States;

(10) the Government of the United States and the Government of Spain Concerning Fisheries Off the Coasts of the United States;

(11) the Government of the United States and the Government of Mexico Concerning Fisheries Off the Coasts of the United States;

(12) the Government of the United States and the Government of the Union of Soviet Socialist Republics referred to in par. (5), as extended until July 1, 1983, pursuant to Diplomatic Notes;

(13) the American Institute in Taiwan and the Coordination Council for North American Affairs;

(14) the Government of the United States and the Government of the Polish People's Republic referred to in par. (6), as extended until July 1, 1983, pursuant to Diplomatic Notes;

(15) the Government of the United States and the Government of the Union of Soviet Socialist Republics referred to in par. (5), as extended until Dec. 31, 1985, pursuant to Diplomatic Notes;

(16) the Government of the United States and the Government of the Polish People's Republic referred to in par. (6), as extended until Dec. 31, 1985, pursuant to Diplomatic Notes; and

(17) the Government of the United States and the Government of the German Democratic Republic referred to in par. (4);

and provided further that the agreements referred to in pars. (1) to (6) were to enter into force and effect with respect to the United States on Feb. 21, 1977, that the agreements referred to in pars. (7) to (11) were to enter into force and effect with respect to the United States on Feb. 27, 1977, that the agreements referred to in pars. (12) to (14) were to enter into force and effect with respect to the United States on July 1, 1982, that the agreements referred to in pars. (15) and (16) were to enter into force and

effect with respect to the United States on July 1, 1984, and that the agreement referred to in par. (17) was to enter into force and effect with respect to the United States on July 1, 1983.

RECIPROCAL FISHERIES AGREEMENT BETWEEN UNITED STATES AND CANADA

Pub. L. 95-6, Sec. 5, as added Pub. L. 95-73, July 27, 1977, 91 Stat. 283; amended Pub. L. 95-314, July 1, 1978, 92 Stat. 376; Pub. L. 96-561, title II, Sec. 238(b), Dec. 22, 1980, 94 Stat. 3300, provided for congressional approval of the Reciprocal Fisheries Agreement for 1978 between the Government of the United States and the Government of Canada, and that the Agreement was to be in force and effect with respect to the United States from Jan. 1, 1978, until such later date in 1978 as was to be determined pursuant to the terms of the Agreement.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1821, 1822, 1824, 1857 of this title.

16 USC Sec. 1824

01/26/98

TITLE 16 - CONSERVATION

CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT

SUBCHAPTER III - FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS

Sec. 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) or subsection (d) of this section 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 any applicable Federal or State fishing regulations.

(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) or subsection (d) of this section, 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.

(d) Transshipment permits

(1) Authority to issue permits

The Secretary may issue a transshipment permit under this subsection which authorizes a vessel other than a vessel of the United States to engage in fishing consisting solely of transporting fish or fish products at sea from a point within the exclusive economic zone or, with the concurrence of a State, within the boundaries of that State, to a point outside the United States to any person who -

(A) submits an application which is approved by the Secretary under paragraph (3); and

(B) pays a fee imposed under paragraph (7).

(2) Transmittal

Upon receipt of an application for a permit under this subsection, the Secretary shall promptly transmit copies of the application to the Secretary of State, Secretary of the department in which the Coast Guard is operating, any appropriate Council, and any affected State.

(3) Approval of application

The Secretary may approve, in consultation with the appropriate Council or Marine Fisheries Commission, an application for a permit under this section if the Secretary determines that -

(A) the transportation of fish or fish products to be conducted under the permit, as described in the application, will be in the interest of the United States and will meet the applicable requirements of this chapter;

(B) the applicant will comply with the requirements described in section 1821(c)(2) of this title with respect to activities authorized by any permit issued pursuant to the application;

(C) the applicant has established any bonds or financial assurances that may be required by the Secretary; and

(D) no owner or operator of a vessel of the United States which has adequate capacity to perform the transportation for which the application is submitted has indicated to the Secretary an interest in performing the transportation at fair and reasonable rates.

(4) Whole or partial approval

The Secretary may approve all or any portion of an application under paragraph (3).

(5) Failure to approve application

If the Secretary does not approve any portion of an application submitted under paragraph (1), the Secretary shall promptly inform the applicant and specify the reasons therefor.

(6) Conditions and restrictions

The Secretary shall establish and include in each permit under this subsection conditions and restrictions, including those conditions and restrictions set forth in subsection (b)(7) of this section, which shall be complied with by the owner and operator of the vessel for which the permit is issued.

(7) Fees

The Secretary shall collect a fee for each permit issued under this subsection, in an amount adequate to recover the costs incurred by the United States in issuing the permit, except that the Secretary shall waive the fee for the permit if the foreign nation under which the vessel is registered does not collect a fee from a vessel of the United States engaged in similar activities in the waters of such foreign nation.

(e) Pacific Insular Areas

(1) Negotiation of Pacific Insular Area fishery agreements

The Secretary of State, with the concurrence of the Secretary and in consultation with any appropriate Council, may negotiate and enter into a Pacific Insular Area fishery agreement to authorize foreign fishing within the exclusive economic zone adjacent to a Pacific Insular Area -

(A) in the case of American Samoa, Guam, or the Northern Mariana Islands, at the request and with the concurrence of, and in consultation with, the Governor of the Pacific Insular Area to which such agreement applies; and

(B) in the case of a Pacific Insular Area other than American Samoa, Guam, or the Northern Mariana Islands, at the request of the Western Pacific Council.

(2) Agreement terms and conditions

A Pacific Insular Area fishery agreement -

(A) shall not be considered to supersede any governing international fishery agreement currently in effect under this chapter, but shall provide an alternative basis for the conduct of foreign fishing within the exclusive economic zone adjacent to Pacific Insular Areas;

(B) shall be negotiated and implemented consistent only with the governing international fishery agreement provisions of this subchapter specifically made applicable in this subsection;

(C) may not be negotiated with a nation that is in violation of a governing international fishery agreement in effect under this chapter;

(D) shall not be entered into if it is determined by the Governor of the applicable Pacific Insular Area with respect to agreements initiated under paragraph (1)(A), or the Western Pacific Council with respect to agreements initiated under paragraph (1)(B), that such an agreement will adversely affect the fishing activities of the indigenous people of such Pacific Insular Area;

(E) shall be valid for a period not to exceed three years and shall only become effective according to the procedures in section 1823 of this title; and

(F) shall require the foreign nation and its fishing vessels to comply with the requirements of paragraphs (1), (2), (3) and (4)(A) of section 1821(c) of this title, section 1821(d) of this title, and section 1821(h) of this title.

(3) Permits for foreign fishing

(A) Application for permits for foreign fishing authorized under a Pacific Insular Areas fishing agreement shall be made, considered and approved or disapproved in accordance with paragraphs (3), (4), (5), (6), (7)(A) and (B), (8), and (9) of

subsection (b) of this section, and shall include any conditions and restrictions established by the Secretary in consultation with the Secretary of State, the Secretary of the department in which the Coast Guard is operating, the Governor of the applicable Pacific Insular Area, and the appropriate Council.

(B) If a foreign nation notifies the Secretary of State of its acceptance of the requirements of this paragraph, paragraph (2)(F), and paragraph (5), including any conditions and restrictions established under subparagraph (A), the Secretary of State shall promptly transmit such notification to the Secretary. Upon receipt of any payment required under a Pacific Insular Area fishing agreement, 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 of the requirements, conditions, and restrictions established under this subsection which apply to the fishing vessel for which the permit is issued.

(4) Marine conservation plans

(A) Prior to entering into a Pacific Insular Area fishery agreement, the Western Pacific Council and the appropriate Governor shall develop a 3-year marine conservation plan detailing uses for funds to be collected by the Secretary pursuant to such agreement. Such plan shall be consistent with any applicable fishery management plan, identify conservation and management objectives (including criteria for determining when such objectives have been met), and prioritize planned marine conservation projects. Conservation and management objectives shall include, but not be limited to -

(i) establishment of Pacific Insular Area observer programs, approved by the Secretary in consultation with the Western Pacific Council, that provide observer coverage for foreign fishing under Pacific Insular Area fishery agreements that is at least equal in effectiveness to the program established by the Secretary under section 1821(h) of this title;

(ii) conduct of marine and fisheries research, including development of systems for information collection, analysis, evaluation, and reporting;

(iii) conservation, education, and enforcement activities related to marine and coastal management, such as living marine resource assessments, habitat monitoring and coastal studies;

(iv) grants to the University of Hawaii for technical assistance projects by the Pacific Island Network, such as education and training in the development and implementation of sustainable marine resources development projects, scientific research, and conservation strategies; and

(v) western Pacific community-based demonstration projects

under section 112(b) of the Sustainable Fisheries Act and other coastal improvement projects to foster and promote the management, conservation, and economic enhancement of the Pacific Insular Areas.

(B) In the case of American Samoa, Guam, and the Northern Mariana Islands, the appropriate Governor, with the concurrence of the Western Pacific Council, shall develop the marine conservation plan described in subparagraph (A) and submit such plan to the Secretary for approval. In the case of other Pacific Insular Areas, the Western Pacific Council shall develop and submit the marine conservation plan described in subparagraph (A) to the Secretary for approval.

(C) If a Governor or the Western Pacific Council intends to request that the Secretary of State renew a Pacific Insular Area fishery agreement, a subsequent 3-year plan shall be submitted to the Secretary for approval by the end of the second year of the existing 3-year plan.

(5) Reciprocal conditions

Except as expressly provided otherwise in this subsection, a Pacific Insular Area fishing agreement may include terms similar to the terms applicable to United States fishing vessels for access to similar fisheries in waters subject to the fisheries jurisdiction of another nation.

(6) Use of payments by American Samoa, Guam, Northern Mariana Islands

Any payments received by the Secretary under a Pacific Insular Area fishery agreement for American Samoa, Guam, or the Northern Mariana Islands shall be deposited into the United States Treasury and then covered over to the Treasury of the Pacific Insular Area for which those funds were collected. Amounts deposited in the Treasury of a Pacific Insular Area shall be available, without appropriation or fiscal year limitation, to the Governor of the Pacific Insular Area -

(A) to carry out the purposes of this subsection;

(B) to compensate (i) the Western Pacific Council for mutually agreed upon administrative costs incurred relating to any Pacific Insular Area fishery agreement for such Pacific Insular Area, and (ii) the Secretary of State for mutually agreed upon travel expenses for no more than 2 Federal representatives incurred as a direct result of complying with paragraph (1)(A); and

(C) to implement a marine conservation plan developed and approved under paragraph (4).

(7) Western Pacific Sustainable Fisheries Fund

There is established in the United States Treasury a Western Pacific Sustainable Fisheries Fund into which any payments

received by the Secretary under a Pacific Insular Area fishery agreement for any Pacific Insular Area other than American Samoa, Guam, or the Northern Mariana Islands shall be deposited. The Western Pacific Sustainable Fisheries Fund shall be made available, without appropriation or fiscal year limitation, to the Secretary, who shall provide such funds only to -

(A) the Western Pacific Council for the purpose of carrying out the provisions of this subsection, including implementation of a marine conservation plan approved under paragraph (4);

(B) the Secretary of State for mutually agreed upon travel expenses for no more than 2 Federal representatives incurred as a direct result of complying with paragraph (1)(B); and

(C) the Western Pacific Council to meet conservation and management objectives in the State of Hawaii if monies remain in the Western Pacific Sustainable Fisheries Fund after the funding requirements of subparagraphs (A) and (B) have been satisfied.

Amounts deposited in such fund shall not diminish funding received by the Western Pacific Council for the purpose of carrying out other responsibilities under this chapter.

(8) Use of fines and penalties

In the case of violations occurring within the exclusive economic zone off American Samoa, Guam, or the Northern Mariana Islands, amounts received by the Secretary which are attributable to fines or penalties imposed under this chapter, including such sums collected from the forfeiture and disposition or sale of property seized subject to its authority, after payment of direct costs of the enforcement action to all entities involved in such action, shall be deposited into the Treasury of the Pacific Insular Area adjacent to the exclusive economic zone in which the violation occurred, to be used for fisheries enforcement and for implementation of a marine conservation plan under paragraph (4).

(Pub. L. 94-265, title II, Sec. 204, Apr. 13, 1976, 90 Stat. 342; Pub. L. 95-354, Sec. 4(5)-(8), Aug. 28, 1978, 92 Stat. 520, 521; Pub. L. 96-470, title I, Sec. 111(b), title II, Sec. 208, Oct. 19, 1980, 94 Stat. 2239, 2245; Pub. L. 96-561, title II, Sec. 232, Dec. 22, 1980, 94 Stat. 3298; Pub. L. 97-453, Sec. 3, Jan. 12, 1983, 96 Stat. 2483; Pub. L. 99-272, title VI, Sec. 6021, Apr. 7, 1986, 100 Stat. 123; Pub. L. 99-659, title I, Sec. 101(c)(2), 102, 103(b), Nov. 14, 1986, 100 Stat. 3707, 3709; Pub. L. 101-627, title I, Sec. 106, 120(b), Nov. 28, 1990, 104 Stat. 4440, 4459; Pub. L. 102-251, title III, Sec. 301(f), Mar. 9, 1992, 106 Stat. 64; Pub. L. 104-297, title I, Sec. 105(d), Oct. 11, 1996, 110 Stat. 3564.)

AMENDMENT OF SUBSECTION (A)

Pub. L. 102-251, title III, Sec. 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".

REFERENCES IN TEXT

Section 112(b) of the Sustainable Fisheries Act, referred to in subsec. (e)(4)(A)(v), is section 112(b) of Pub. L. 104-297, which amended section 1856 of this title. The reference probably should have been to section 111(b) of Pub. L. 104-297 which relates to western Pacific demonstration projects and is set out as a note under section 1855 of this title.

AMENDMENTS

1996 - Subsec. (b)(7). Pub. L. 104-297, Sec. 105(d)(1), inserted "or subsection (d) of this section" after "under paragraph (6)" in introductory provisions.

Subsec. (b)(7)(A). Pub. L. 104-297, Sec. 105(d)(2), substituted "any applicable Federal or State fishing regulations" for "the regulations promulgated to implement any such plan".

Subsec. (b)(7)(D). Pub. L. 104-297, Sec. 105(d)(3), inserted "or subsection (d) of this section" after "under paragraph (6)(B)".

Subsecs. (d), (e). Pub. L. 104-297, Sec. 105(d)(4), added subsecs. (d) and (e).

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

Subsec. (b)(10). Pub. L. 101-627, Sec. 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, Sec. 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, Sec. 101(c)(2), substituted "exclusive economic zone" for "fishery conservation zone".

Subsec. (b)(1). Pub. L. 99-659, Sec. 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, Sec. 103(b), added subpar. (G).

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

Subsec. (b)(6)(A). Pub. L. 99-659, Sec. 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, Sec. 101(c)(2), substituted "exclusive economic zone" for "fishery conservation zone".

Subsec. (b)(12). Pub. L. 99-659, Sec. 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, Sec. 3(1), inserted "hold" before "capacity".

Subsec. (b)(4). Pub. L. 97-453, Sec. 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, Sec. 3(3), struck out "to each appropriate Council and" after "application".

Subsec. (b)(4)(C). Pub. L. 97-453, Sec. 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, Sec. 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, Sec. 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, Sec. 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, Sec. 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, Sec. 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, Sec. 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, Sec. 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, Sec. 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, Sec. 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, 1822, 1825, 1852, 1853, 1856, 1857, 1861 of this title; title 22 section 1980.

16 USC Sec. 1825

01/26/98

TITLE 16 - CONSERVATION

CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT

SUBCHAPTER III - FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS

Sec. 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

(C) as a consequence of a claim of jurisdiction which is not recognized by the United States;

he shall certify such determination to the Secretary of the Treasury.

(b) Prohibitions

Upon receipt of any certification from the Secretary of State under subsection (a) of this section, the Secretary of the Treasury shall immediately take such action as may be necessary and appropriate to prohibit the importation into the United States -

(1) of all fish and fish products from the fishery involved, if any; and

(2) upon recommendation of the Secretary of State, such other fish or fish products, from any fishery of the foreign nation concerned, which the Secretary of State finds to be appropriate to carry out the purposes of this section.

(c) Removal of prohibition

If the Secretary of State finds that the reasons for the imposition of any import prohibition under this section no longer prevail, the Secretary of State shall notify the Secretary of the Treasury, who shall promptly remove such import prohibition.

(d) Definitions

As used in this section -

(1) The term "fish" includes any highly migratory species.

(2) The term "fish products" means any article which is produced from or composed of (in whole or in part) any fish.

(Pub. L. 94-265, title II, Sec. 205, Apr. 13, 1976, 90 Stat. 345; Pub. L. 101-627, title I, Sec. 105(b)(1), Nov. 28, 1990, 104 Stat. 4440.)

AMENDMENTS

1990 - Subsec. (a)(1). Pub. L. 101-627, Sec. 105(b)(1)(A), inserted "including fisheries for tuna species," after "authority," and struck out "traditional" after "in accordance

with".

Subsec. (a)(2). Pub. L. 101-627, Sec. 105(b)(1)(B), substituted "tuna" for "highly migratory".

EFFECTIVE DATE OF 1990 AMENDMENT

Section 105(b)(2) of Pub. L. 101-627 provided that: "The amendments made by this subsection (amending this section) shall take effect on January 1, 1992."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 972c, 973a of this title.

16 USC Sec. 1826

01/26/98

TITLE 16 - CONSERVATION

CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT

SUBCHAPTER III - FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS

Sec. 1826. Large-scale driftnet fishing

(a) Short title

This section incorporates and expands upon provisions of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 and may be cited as the "Driftnet Act Amendments of 1990".

(b) Findings

The Congress finds that -

(1) the continued widespread use of large-scale driftnets beyond the exclusive economic zone of any nation is a destructive fishing practice that poses a threat to living marine resources of the world's oceans, including but not limited to the North and South Pacific Ocean and the Bering Sea;

(2) the use of large-scale driftnets is expanding into new regions of the world's oceans, including the Atlantic Ocean and Caribbean Sea;

(3) there is a pressing need for detailed and reliable information on the number of seabirds, sea turtles, nontarget fish, and marine mammals that become entangled and die in actively fished large-scale driftnets and in large-scale driftnets that are lost, abandoned, or discarded;

(4) increased efforts, including reliable observer data and enforcement mechanisms, are needed to monitor, assess, control, and reduce the adverse impact of large-scale driftnet fishing on living marine resources;

(5) the nations of the world have agreed in the United Nations, through General Assembly Resolution Numbered 44-225, approved December 22, 1989, by the General Assembly, that a moratorium

should be imposed by June 30, 1992, on the use of large-scale driftnets beyond the exclusive economic zone of any nation;

(6) the nations of the South Pacific have agreed to a moratorium on the use of large-scale driftnets in the South Pacific through the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, which was agreed to in Wellington, New Zealand, on November 29, 1989; and

(7) increasing population pressures and new knowledge of the importance of living marine resources to the health of the global ecosystem demand that greater responsibility be exercised by persons fishing or developing new fisheries beyond the exclusive economic zone of any nation.

(c) Policy

It is declared to be the policy of the Congress in this section that the United States should -

(1) implement the moratorium called for by the United Nations General Assembly in Resolution Numbered 44-225;

(2) support the Tarawa Declaration and the Wellington Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific; and

(3) secure a permanent ban on the use of destructive fishing practices, and in particular large-scale driftnets, by persons or vessels fishing beyond the exclusive economic zone of any nation.

(d) International agreements

The Secretary, through the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall seek to secure international agreements to implement immediately the findings, policy, and provisions of this section, and in particular an international ban on large-scale driftnet fishing. The Secretary, through the Secretary of State, shall include, in any agreement which addresses the taking of living marine resources of the United States, provisions to ensure that -

(1) each large-scale driftnet fishing vessel of a foreign nation that is party to the agreement, including vessels that may operate independently to develop new fishing areas, which operate beyond the exclusive economic zone of any nation, is included in such agreement;

(2) each large-scale driftnet fishing vessel of a foreign nation that is party to the agreement, which operates beyond the exclusive economic zone of any nation, is equipped with satellite transmitters which provide real-time position information accessible to the United States;

(3) statistically reliable monitoring by the United States is carried out, through the use of on-board observers or through dedicated platforms provided by foreign nations that are parties to the agreement, of all target and nontarget fish species,

marine mammals, sea turtles, and sea birds entangled or killed by large-scale driftnets used by fishing vessels of foreign nations that are parties to the agreement;

(4) officials of the United States have the right to board and inspect for violations of the agreement any large-scale driftnet fishing vessels operating under the flag of a foreign nation that is party to the agreement at any time while such vessel is operating in designated areas beyond the exclusive economic zone of any nation;

(5) all catch landed or transshipped at sea by large-scale driftnet fishing vessels of a foreign nation that is a party to the agreement, and which are operated beyond the exclusive economic zone of any nation, is reliably monitored and documented;

(6) time and area restrictions are imposed on the use of large-scale driftnets in order to prevent interception of anadromous species;

(7) all large-scale driftnets used are constructed, insofar as feasible, with biodegradable materials which break into segments that do not represent a threat to living marine resources;

(8) all large-scale driftnets are marked at appropriate intervals in a manner that conclusively identifies the vessel and flag nation responsible for each such driftnet;

(9) the taking of nontarget fish species, marine mammals, sea turtles, seabirds, and endangered species or other species protected by international agreements to which the United States is a party is minimized and does not pose a threat to existing fisheries or the long-term health of living marine resources; and

(10) definitive steps are agreed upon to ensure that parties to the agreement comply with the spirit of other international agreements and resolutions concerning the use of large-scale driftnets beyond the exclusive economic zone of any nation.

(e) Report

Not later than January 1, 1991, and every year thereafter until the purposes of this section are met, the Secretary, after consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report -

(1) describing the steps taken to carry out the provisions of this section, particularly subsection (c) of this section;

(2) evaluating the progress of those efforts, the impacts on living marine resources, including available observer data, and specifying plans for further action;

(3) containing a list and description of any new fisheries

developed by nations that conduct, or authorize their nationals to conduct, large-scale driftnet fishing beyond the exclusive economic zone of any nation; and

(4) containing a list of the nations that conduct, or authorize their nationals to conduct, large-scale driftnet fishing beyond the exclusive economic zone of any nation in a manner that diminishes the effectiveness of or is inconsistent with any international agreement governing large-scale driftnet fishing to which the United States is a party or otherwise subscribes.

(f) Certification

If at any time the Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, identifies any nation that warrants inclusion in the list described under subsection (e)(4) of this section, the Secretary shall certify that fact to the President. Such certification shall be deemed to be a certification for the purposes of section 1978(a) of title 22.

(g) Effect on sovereign rights

This section shall not serve or be construed to expand or diminish the sovereign rights of the United States, as stated by Presidential Proclamation Numbered 5030, dated March 10, 1983, and reflected in this chapter or other existing law.

(h) "Living marine resources" defined

As used in this section, the term "living marine resources" includes fish, marine mammals, sea turtles, and seabirds and other waterfowl.

(Pub. L. 94-265, title II, Sec. 206, as added Pub. L. 95-6, Sec. 3(1), Feb. 21, 1977, 91 Stat. 15; amended Pub. L. 99-659, title I, Sec. 101(c)(2), Nov. 14, 1986, 100 Stat. 3707; Pub. L. 101-627, title I, Sec. 107(a), Nov. 28, 1990, 104 Stat. 4441; Pub. L. 104-297, title I, Sec. 105(f), Oct. 11, 1996, 110 Stat. 3569.)

REFERENCES IN TEXT

The Driftnet Impact Monitoring, Assessment, and Control Act of 1987, referred to in subsec. (a), is title IV of Pub. L. 100-220, which is set out as a note under section 1822 of this title.

Presidential Proclamation Numbered 5030, referred to in subsec. (g), is set out under section 1453 of this title.

AMENDMENTS

1996 - Subsec. (e). Pub. L. 104-297, Sec. 105(f)(1), redesignated pars. (5) and (6) as (3) and (4), respectively, and struck out former pars. (3) and (4) which read as follows:

"(3) identifying and evaluating the effectiveness of unilateral measures and multilateral measures, including sanctions, that are

available to encourage nations to agree to and comply with this section, and recommendations for legislation to authorize any additional measures that are needed if those are considered ineffective;

"(4) identifying, evaluating, and making any recommendations considered necessary to improve the effectiveness of the law, policy, and procedures governing enforcement of the exclusive management authority of the United States over anadromous species against fishing vessels engaged in fishing beyond the exclusive economic zone of any nation;"

Subsec. (f). Pub. L. 104-297, Sec. 105(f)(2), substituted "subsection (e)(4) of this section" for "subsection (e)(6) of this section".

1990 - Pub. L. 101-627 amended section generally, substituting provisions relating to large-scale driftnet fishing for provisions relating to transitional provisions.

1986 - Subsec. (b). Pub. L. 99-659 substituted "exclusive economic zone" for "fishery conservation zone".

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. Committee on Merchant Marine and Fisheries of House of Representatives treated as referring to Committee on Resources of House of Representatives in case of provisions relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography by section 1(b)(3) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

16 USC Sec. 1826a

01/26/98

TITLE 16 - CONSERVATION CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT SUBCHAPTER III - FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS

Sec. 1826a. Denial of port privileges and sanctions for high seas large-scale driftnet fishing

(a) Denial of port privileges

(1) Publication of list

Not later than 30 days after November 2, 1992, and periodically thereafter, the Secretary of Commerce, in consultation with the Secretary of State, shall publish a list of nations whose

nationals or vessels conduct large-scale driftnet fishing beyond the exclusive economic zone of any nation.

(2) Denial of port privileges

The Secretary of the Treasury shall, in accordance with recognized principles of international law -

(A) withhold or revoke the clearance required by section 91 of title 46, Appendix, for any large-scale driftnet fishing vessel that is documented under the laws of the United States or of a nation included on a list published under paragraph (1); and

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

(3) Notification of nation

Before the publication of a list of nations under paragraph (1), the Secretary of State shall notify each nation included on that list regarding -

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

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

(b) Sanctions

(1) Identifications

(A) Initial identifications

Not later than January 10, 1993, the Secretary of Commerce shall -

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

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

(B) Additional identifications

At any time after January 10, 1993, whenever the Secretary of Commerce has reason to believe that the nationals or vessels of any nation are conducting large-scale driftnet fishing beyond the exclusive economic zone of any nation, the Secretary of Commerce shall -

(i) identify that nation; and

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

(2) Consultations

Not later than 30 days after a nation is identified under paragraph (1)(B), the President shall enter into consultations with the government of that nation for the purpose of obtaining

an agreement that will effect the immediate termination of large-scale driftnet fishing by the nationals or vessels of that nation beyond the exclusive economic zone of any nation.

(3) Prohibition on imports of fish and fish products and sport fishing equipment

(A) Prohibition

The President -

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

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

(B) Implementation of prohibition

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

(C) Public notice of prohibition

Before the effective date of any import prohibition under this paragraph, the Secretary of the Treasury shall provide public notice of the impending prohibition.

(4) Additional economic sanctions

(A) Determination of effectiveness of sanctions

Not later than six months after the date the Secretary of Commerce identifies a nation under paragraph (1), the Secretary shall determine whether -

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

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

(B) Certification

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

(C) Effect of certification

Certification by the Secretary of Commerce under subparagraph (B) is deemed to be a certification under section 1978(a) of title 22.

(Pub. L. 102-582, title I, Sec. 101, Nov. 2, 1992, 106 Stat. 4901.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(3)(B), is Pub. L. 102-582, Nov. 2, 1992, 106 Stat. 4900, known as the High Seas Driftnet Fisheries Enforcement Act, which enacted sections 1826a to 1826c of this title and section 1707a of Title 46, Appendix, Shipping, amended sections 1362, 1371, 1852, and 1862 of this title, section 1978 of Title 22, Foreign Relations and Intercourse, and section 2110 of Title 46, repealed section 1111c of Title 46, Appendix, and enacted provisions set out as notes under this section and sections 1801, 1823, and 1861 of this title and section 2110 of Title 46. For complete classification of this Act to the Code, see Short Title of 1992 Amendments note set out under section 1801 of this title and Tables.

CODIFICATION

Section was enacted as part of the High Seas Driftnet Fisheries Enforcement Act, and not as part of the Magnuson-Stevens Fishery Conservation and Management Act which comprises this chapter.

HIGH SEAS DRIFTNET FISHERIES ENFORCEMENT; CONGRESSIONAL STATEMENT OF FINDINGS AND POLICY

Section 2 of Pub. L. 102-582, as amended by Pub. L. 104-208, div. A, title I, Sec. 101(a) (title II, Sec. 211(b)), Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that:

"(a) Findings. - Congress makes the following findings:

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

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

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

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

"(5) The United Nations has commended the unilateral,

regional, and international efforts undertaken by members of the international community and international organizations to implement and support the objectives of the General Assembly resolutions.

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

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

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

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

"(10) In order to ensure that the global moratorium on large-scale driftnet fishing called for in United Nations General Assembly Resolution numbered 46-215 takes effect by December 31, 1992, and that unregulated fishing practices in the waters of the Central Bering Sea are reduced or eliminated, the United States should take the actions described in this Act (see Short Title of 1992 Amendments note set out under section 1801 of this title) and encourage other nations to take similar action.

"(b) Policy. - It is the stated policy of the United States to -

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

"(2) bring about a moratorium on fishing in the Central Bering

Sea, or an international conservation and management agreement to which the United States and the Russian Federation are parties that regulates fishing in the Central Bering Sea; and

"(3) secure a permanent ban on the use of destructive fishing practices, and in particular large-scale driftnets, by persons or vessels fishing beyond the exclusive economic zone of any nation."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1826b, 1826c of this title.

16 USC Sec. 1826b

01/26/98

TITLE 16 - CONSERVATION CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT SUBCHAPTER III - FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS

Sec. 1826b. Duration of denial of port privileges and sanctions

Any denial of port privileges or sanction under section 1826a of this title with respect to a nation shall remain in effect until such time as the Secretary of Commerce certifies to the President and the Congress that such nation has terminated large-scale driftnet fishing by its nationals and vessels beyond the exclusive economic zone of any nation.

(Pub. L. 102-582, title I, Sec. 102, Nov. 2, 1992, 106 Stat. 4903.)

CODIFICATION

Section was enacted as part of the High Seas Driftnet Fisheries Enforcement Act, and not as part of the Magnuson-Stevens Fishery Conservation and Management Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1826c of this title.

16 USC Sec. 1826c

01/26/98

TITLE 16 - CONSERVATION CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT SUBCHAPTER III - FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS

Sec. 1826c. Definitions

In sections 1826a to 1826c of this title, the following definitions apply:

(1) Fish and fish products

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

(2) Large-scale driftnet fishing

(A) In general

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

(B) Exception

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

(3) Large-scale driftnet fishing vessel

The term "large-scale driftnet fishing vessel" means any vessel which is -

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

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

(Pub. L. 102-582, title I, Sec. 104, Nov. 2, 1992, 106 Stat. 4903.)

REFERENCES IN TEXT

Sections 1826a to 1826c of this title, referred to in text, was in the original "this title", meaning title I of Pub. L. 102-582, Nov. 2, 1992, 106 Stat. 4901, which enacted sections 1826a to 1826c of this title and amended section 1371 of this title. For complete classification of title I to the Code, see Tables.

CODIFICATION

Section was enacted as part of the High Seas Driftnet Fisheries Enforcement Act, and not as part of the Magnuson-Stevens Fishery Conservation and Management Act which comprises this chapter.

16 USC Sec. 1826d

01/26/98

TITLE 16 - CONSERVATION
CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT
SUBCHAPTER III - FOREIGN FISHING AND INTERNATIONAL FISHERY
AGREEMENTS

Sec. 1826d. Prohibition

The United States, or any agency or official acting on behalf of the United States, may not enter into any international agreement with respect to the conservation and management of living marine resources or the use of the high seas by fishing vessels that would prevent full implementation of the global moratorium on large-scale driftnet fishing on the high seas, as such moratorium is expressed in Resolution 46/215 of the United Nations General Assembly.

(Pub. L. 104-43, title VI, Sec. 603, Nov. 3, 1995, 109 Stat. 392.)

CODIFICATION

Section was enacted as part of the High Seas Driftnet Fishing Moratorium Protection Act, and also as part of the Fisheries Act of 1995, and not as part of the Magnuson-Stevens Fishery Conservation and Management Act which comprises this chapter.

CONGRESSIONAL FINDINGS

Section 602 of Pub. L. 104-43 provided that: "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) (16 U.S.C. 1822 note), the Driftnet Act Amendments of 1990 (Public Law 101-627) (16 U.S.C. 1826), and the High Seas Driftnet Fisheries Enforcement Act (title I, Public Law 102-582) (see Short Title of 1992 Amendment note set out under section 1801 of this title);

"(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."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1826f of this title.

16 USC Sec. 1826e

01/26/98

TITLE 16 - CONSERVATION

CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT

SUBCHAPTER III - FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS

Sec. 1826e. Negotiations

The Secretary of State, on behalf of the United States, shall seek to enhance the implementation and effectiveness of the United Nations General Assembly resolutions and decisions regarding the moratorium on large-scale driftnet fishing on the high seas through appropriate international agreements and organizations.

(Pub. L. 104-43, title VI, Sec. 604, Nov. 3, 1995, 109 Stat. 392.)

CODIFICATION

Section was enacted as part of the High Seas Driftnet Fishing Moratorium Protection Act, and also as part of the Fisheries Act of 1995, and not as part of the Magnuson-Stevens Fishery Conservation and Management Act which comprises this chapter.

16 USC Sec. 1826f

01/26/98

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SUBCHAPTER III - FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS

Sec. 1826f. Certification

The Secretary of State shall determine in writing prior to the signing or provisional application by the United States of any international agreement with respect to the conservation and management of living marine resources or the use of the high seas by fishing vessels that the prohibition contained in section 1826d of this title will not be violated if such agreement is signed or provisionally applied.

(Pub. L. 104-43, title VI, Sec. 605, Nov. 3, 1995, 109 Stat. 392.)

CODIFICATION

Section was enacted as part of the High Seas Driftnet Fishing Moratorium Protection Act, and also as part of the Fisheries Act of 1995, and not as part of the Magnuson-Stevens Fishery Conservation and Management Act which comprises this chapter.

16 USC Sec. 1826g

01/26/98

TITLE 16 - CONSERVATION
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Sec. 1826g. Enforcement

The President shall utilize appropriate assets of the Department of Defense, the United States Coast Guard, and other Federal agencies to detect, monitor, and prevent violations of the United Nations moratorium on large-scale driftnet fishing on the high seas for all fisheries under the jurisdiction of the United States and, in the case of fisheries not under the jurisdiction of the United States, to the fullest extent permitted under international law.

(Pub. L. 104-43, title VI, Sec. 606, Nov. 3, 1995, 109 Stat. 392.)

CODIFICATION

Section was enacted as part of the High Seas Driftnet Fishing Moratorium Protection Act, and also as part of the Fisheries Act of 1995, and not as part of the Magnuson-Stevens Fishery Conservation and Management Act which comprises this chapter.

16 USC Sec. 1827

01/26/98

TITLE 16 - CONSERVATION
CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT
SUBCHAPTER III - FOREIGN FISHING AND INTERNATIONAL FISHERY
AGREEMENTS

Sec. 1827. Observer program regarding certain foreign fishing

(a) Definitions

As used in this section -

(1) The term "Act of 1976" means the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(2) The term "billfish" means any species of marlin, spearfish, sailfish or swordfish.

(3) The term "Secretary" means the Secretary of Commerce.

(b) Observer program

The Secretary shall establish a program under which a United States observer will be stationed aboard each foreign fishing vessel while that vessel -

(1) is in waters that are within -

(A) the fishery conservation zone established under section 101 of the Act of 1976 (16 U.S.C. 1811), (FOOTNOTE 1) and (FOOTNOTE 1) See References in Text note below.

(B) the Convention area as defined in Article I of the International Convention for the Conservation of Atlantic Tunas; and

(2) is taking or attempting to take any species of fish if such taking or attempting to take may result in the incidental taking of billfish.

The Secretary may acquire observers for such program through contract with qualified private persons.

(c) Functions of observers

United States observers, while aboard foreign fishing vessels as required under subsection (b) of this section, shall carry out such scientific and other functions as the Secretary deems necessary or appropriate to carry out this section.

(d) Fees

There is imposed for each year after 1980 on the owner or operator of each foreign fishing vessel that, in the judgment of the Secretary, will engage in fishing in waters described in subsection (b)(1) of this section during that year which may result in the incidental taking of billfish a fee in an amount sufficient to cover all of the costs of providing an observer aboard that vessel under the program established under subsection (a) of this section. The fees imposed under this subsection for any year shall be paid to the Secretary before that year begins. All fees collected by the Secretary under this subsection shall be deposited

in the Fund established by subsection (e) of this section.

(e) Fund

There is established in the Treasury of the United States the Foreign Fishing Observer Fund. The Fund shall be available to the Secretary as a revolving fund for the purpose of carrying out this section. The Fund shall consist of the fees deposited into it as required under subsection (d) of this section. All payments made by the Secretary to carry out this section shall be paid from the Fund, only to the extent and in the amounts provided for in advance in appropriation Acts. Sums in the Fund which are not currently needed for the purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(f) Prohibited acts

(1) It is unlawful for any person who is the owner or operator of a foreign fishing vessel to which this section applies -

(A) to violate any regulation issued under subsection (g) of this section;

(B) to refuse to pay the fee imposed under subsection (d) of this section after being requested to do so by the Secretary; or

(C) to refuse to permit an individual who is authorized to act as an observer under this section with respect to that vessel to board the vessel for purposes of carrying out observer functions.

(2) Section 308 of the Act of 1976 (16 U.S.C. 1858) (relating to civil penalties) applies to any act that is unlawful under paragraph (1), and for purposes of such application the commission of any such act shall be treated as an act the commission of which is unlawful under section 307 of the Act of 1976 (16 U.S.C. 1857).

(g) Regulations

The Secretary shall issue such regulations as are necessary or appropriate to carry out this section.

(Pub. L. 96-339, Sec. 2, Sept. 4, 1980, 94 Stat. 1069; Pub. L. 96-561, title II, Sec. 238(b), Dec. 22, 1980, 94 Stat. 3300; Pub. L. 104-208, div. A, title I, Sec. 101(a) (title II, Sec. 211(b)), Sept. 30, 1996, 110 Stat. 3009, 3009-41.)

REFERENCES IN TEXT

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in subsec. (a)(1), is Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

Section 101 of the Act of 1976 (16 U.S.C. 1811), referred to in subsec. (b)(1)(A), which established the fishery conservation zone, was amended generally by Pub. L. 99-659, title I, Sec. 101(b), Nov.

14, 1986, 100 Stat. 3706, and now relates to United States sovereign rights to fish and fishery management authority within the exclusive economic zone.

CODIFICATION

Section was not enacted as part of the Magnuson-Stevens Fishery Conservation and Management Act which comprises this chapter.

AMENDMENTS

1996 - Subsec. (a)(1). Pub. L. 104-208 substituted "Magnuson-Stevens Fishery" for "Magnuson Fishery".

1980 - Subsec. (a)(1). Pub. L. 96-561 substituted "Magnuson Fishery Conservation and Management Act" for "Fishery Conservation and Management Act of 1976".

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(a) (title II, Sec. 211(b)) of div. A of Pub. L. 104-208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 238(b) of Pub. L. 96-561 provided that the amendment made by that section is effective 15 days after Dec. 22, 1980.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 971h, 971i of this title.

16 USC SUBCHAPTER IV - NATIONAL FISHERY MANAGEMENT PROGRAM 01/26/98

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CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT
SUBCHAPTER IV - NATIONAL FISHERY MANAGEMENT PROGRAM

SUBCHAPTER IV - NATIONAL FISHERY MANAGEMENT PROGRAM

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1802, 1821, 3343 of this title.

16 USC Sec. 1851 01/26/98

TITLE 16 - CONSERVATION
CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT
SUBCHAPTER IV - NATIONAL FISHERY MANAGEMENT PROGRAM

Sec. 1851. National standards for fishery conservation and management

(a) In general

Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this subchapter shall be consistent with the following national standards for fishery conservation and management:

(1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.

(2) Conservation and management measures shall be based upon the best scientific information available.

(3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

(4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(5) Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

(7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

(8) Conservation and management measures shall, consistent with the conservation requirements of this chapter (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

(9) Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

(10) Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

(b) Guidelines

The Secretary shall establish advisory guidelines (which shall not have the force and effect of law), based on the national standards, to assist in the development of fishery management plans.

(Pub. L. 94-265, title III, Sec. 301, Apr. 13, 1976, 90 Stat. 346; Pub. L. 97-453, Sec. 4, Jan. 12, 1983, 96 Stat. 2484; Pub. L. 98-623, title IV, Sec. 404(3), Nov. 8, 1984, 98 Stat. 3408; Pub. L. 104-297, title I, Sec. 106, Oct. 11, 1996, 110 Stat. 3570.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(8), was in the original "this Act", meaning Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, known as the Magnuson-Stevens Fishery Conservation and Management Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

AMENDMENTS

1996 - Subsec. (a)(5). Pub. L. 104-297, Sec. 106(a), substituted "consider efficiency" for "promote efficiency".

Subsec. (a)(8) to (10). Pub. L. 104-297, Sec. 106(b), added pars. (8) to (10).

1984 - Subsec. (a)(1). Pub. L. 98-623 inserted "for the United States fishing industry".

1983 - Subsec. (b). Pub. L. 97-453 substituted "advisory guidelines (which shall not have the force and effect of law)" for "guidelines".

SHORT TITLE OF 1997 AMENDMENT

Pub. L. 105-146, Sec. 1, Dec. 16, 1997, 111 Stat. 2672, provided that: "This Act (repealing section 757g of this title, amending provisions set out as notes under this section and listed in a table of National Wildlife Conservation Areas set out under section 668dd of this title, and repealing provisions set out as notes under this section) may be cited as the 'Atlantic Striped Bass Conservation Act Amendments of 1997'."

RESTRICTION ON FUNDING CERTAIN NEW FISHERY MANAGEMENT PLANS, AMENDMENTS OR REGULATIONS

Pub. L. 104-208, div. A, title I, Sec. 101(a) (title II, Sec. 208, 211(b)), Sept. 30, 1996, 110 Stat. 3009, 3009-40, 3009-41, provided that: "None of the funds appropriated under this Act or any other Act henceforth may be used to develop new fishery management plans, amendments, or regulations which create new individual fishing quota programs (whether such quotas are transferable or not) or to implement any such plans, amendments or regulations approved by a Regional Fishery Management Council or

the Secretary after January 4, 1995, until offsetting fees to pay for the cost of administering such plans, amendments, or regulations are expressly authorized under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.). This restriction shall also apply to any program relating to the Gulf of Mexico commercial red snapper fishery that authorizes the consolidation of licenses, permits or endorsements that result in different trip limits for vessels in the same class. This restriction shall not apply in any way to the North Pacific halibut and sablefish, South Atlantic wreckfish, or the Mid-Atlantic surfclam and ocean (including mahogany) quohog individual fishing quota programs. The term 'individual fishing quota' does not include a community development quota."

Similar provisions were contained in the following prior appropriation act:

Pub. L. 104-134, title I, Sec. 101((a)) (title II, Sec. 210), Apr. 26, 1996, 110 Stat. 1321, 1321-31; renumbered title I, Pub. L. 104-140, Sec. 1(a), May 2, 1996, 110 Stat. 1327; repealed by Pub. L. 104-297, title I, Sec. 108(f)(6), Oct. 11, 1996, 110 Stat. 3579.

ALBEMARLE SOUND-ROANOKE RIVER BASIN: STRIPED BASS STUDY

Pub. L. 100-589, Sec. 5, Nov. 3, 1988, 102 Stat. 2984, related to requirement of biological study of striped bass fishery resources and habitats of Albemarle Sound-Roanoke River basin area and development of short-term and long-term recommendations for restoring and conserving these resources and habitats, prior to repeal by Pub. L. 105-146, Sec. 3(b), Dec. 16, 1997, 111 Stat. 2677.

EXCLUSIVE ECONOMIC ZONE: ATLANTIC STRIPED BASS PROTECTION

Pub. L. 100-589, Sec. 6(a)-(f), Nov. 3, 1988, 102 Stat. 2986, as amended by Pub. L. 102-130, Sec. 4, Oct. 17, 1991, 105 Stat. 627; Pub. L. 104-208, div. A, title I, Sec. 101(a) (title II, Sec. 211(b)), Sept. 30, 1996, 110 Stat. 3009, 3009-41, directed Secretary of Commerce to regulate fishing for Atlantic striped bass in exclusive economic zone determined to be consistent with national standards set forth in this section, prior to repeal by Pub. L. 105-146, Sec. 3(c), Dec. 16, 1997, 111 Stat. 2677.

ATLANTIC STRIPED BASS CONSERVATION

Pub. L. 98-613, Sec. 1-9, Oct. 31, 1984, 98 Stat. 3187-3190, as amended by Pub. L. 99-432, Sec. 1-5, Oct. 1, 1986, 100 Stat. 989, 990; Pub. L. 100-589, Sec. 1, 2, 4, 6(g), Nov. 3, 1988, 102 Stat. 2984, 2987; Pub. L. 102-130, Sec. 2, Oct. 17, 1991, 105 Stat. 626; Pub. L. 103-206, title VIII, Sec. 812, formerly Sec. 810, Dec. 20, 1993, 107 Stat. 2453, renumbered Sec. 812, Pub. L. 104-297, title IV, Sec. 404(c), Oct. 11, 1996, 110 Stat. 3619; Pub. L. 104-208, div. A, title I, Sec. 101(a) (title II, Sec. 211(b)), Sept. 30, 1996, 110 Stat. 3009, 3009-41; Pub. L. 105-146, Sec. 2, Dec. 16,

1997, 111 Stat. 2672, provided that:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Atlantic Striped Bass Conservation Act'.

"SEC. 2. FINDINGS AND PURPOSES.

"(a) Findings. - The Congress finds and declares the following:

"(1) Atlantic striped bass are of historic commercial and recreational importance and economic benefit to the Atlantic coastal States and to the Nation.

"(2) No single government entity has full management authority throughout the range of the Atlantic striped bass.

"(3) The population of Atlantic striped bass -

"(A) has been subject to large fluctuations due to natural causes, fishing pressure, environmental pollution, loss and alteration of habitat, inadequacy of fisheries conservation and management practices, and other causes; and

"(B) risks potential depletion in the future without effective monitoring and conservation and management measures.

"(4) It is in the national interest to implement effective procedures and measures to provide for effective interjurisdictional conservation and management of this species.

"(b) Purpose. - It is therefore declared to be the purpose of the Congress in this Act to support and encourage the development, implementation, and enforcement of effective interstate action regarding the conservation and management of the Atlantic striped bass.

"SEC. 3. DEFINITIONS.

"As used in this Act -

"(1) the term 'Magnuson Act' means the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

"(2) The term 'Atlantic striped bass' means members of stocks or populations of the species *Morone saxatilis*, which ordinarily migrate seaward of the waters described in paragraph (3)(A)(i).

"(3) The term 'coastal waters' means -

"(A) for each coastal State referred to in paragraph (4)(A)

-

"(i) all waters, whether salt or fresh, of the coastal State shoreward of the baseline from which the territorial sea of the United States is measured; and

"(ii) the waters of the coastal State seaward from the baseline referred to in clause (i) to the inner boundary of the exclusive economic zone;

"(B) for the District of Columbia, those waters within its jurisdiction; and

"(C) for the Potomac River Fisheries Commission, those waters of the Potomac River within the boundaries established

by the Potomac River Compact of 1958.

"(4) The term 'coastal State' means -

"(A) Pennsylvania and each State of the United States bordering on the Atlantic Ocean north of the State of South Carolina;

"(B) the District of Columbia; and

"(C) the Potomac River Fisheries Commission established by the Potomac River Compact of 1958.

"(5) The term 'Commission' means the Atlantic States Marine Fisheries Commission established under the interstate compact consented to and approved by the Congress in Public Laws 77-539 (May 4, 1942, ch. 283, 56 Stat. 267) and 81-721 (Aug. 19, 1950, ch. 763, 64 Stat. 467).

"(6) The term 'exclusive economic zone' has the meaning given such term in section 3(6) of the Magnuson Act (16 U.S.C. 1802(6)).

"(7) The term 'fishing' means -

"(A) the catching, taking, or harvesting of Atlantic striped bass, except when incidental to harvesting that occurs in the course of commercial or recreational fish catching activities directed at a species other than Atlantic striped bass;

"(B) the attempted catching, taking, or harvesting of Atlantic striped bass; and

"(C) any operation at sea in support of, or in preparation for, any activity described in subparagraph (A) or (B).

The term does not include any scientific research authorized by the Federal Government or by any State government.

"(8) The term 'moratorium area' means the coastal waters with respect to which a declaration under section 5(a) applies.

"(9) The term 'moratorium period' means the period beginning on the day on which moratorium is declared under section 5(a) regarding a coastal State and ending on the day on which the Commission notifies the Secretaries that that State has taken appropriate remedial action with respect to those matters that were the case of the moratorium being declared.

"(10) The term 'Plan' means a plan for managing Atlantic striped bass, or an amendment to such plan, that is prepared and adopted by the Commission.

"(11) The term 'Secretary' means the Secretary of Commerce or a designee of the Secretary of Commerce.

"(12) The term 'Secretaries' means the Secretary of Commerce and the Secretary of the Interior or their designees.

"SEC. 4. MONITORING OF IMPLEMENTATION AND ENFORCEMENT BY COASTAL STATES.

"(a) Determination. - During December of each fiscal year, and at any other time it deems necessary the Commission shall determine

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"(1) whether each coastal State has adopted all regulatory measures necessary to fully implement the Plan in its coastal waters; and

"(2) whether the enforcement of the Plan by each coastal State is satisfactory.

"(b) Satisfactory State Enforcement. - For purposes of subsection (a)(2), enforcement by a coastal State shall not be considered satisfactory by the Commission if, in its view, the enforcement is being carried out in such a manner that the implementation of the Plan within the coastal waters of the State is being, or will likely be, substantially and adversely affected.

"(c) Notification of Secretaries. - The Commission shall immediately notify the Secretaries of each negative determination made by it under subsection (a).

"SEC. 5. MORATORIUM.

"(a) Secretarial Action After Notification. - Upon receiving notice from the Commission under section 4(c) of a negative determination regarding a coastal State, the Secretaries shall determine jointly, within 30 days, whether that coastal State is in compliance with the Plan and, if the State is not in compliance, the Secretaries shall declare jointly a moratorium on fishing for Atlantic striped bass within the coastal waters of that coastal State. In making such a determination, the Secretaries shall carefully consider and review the comments of the Commission and that coastal State in question.

"(b) Prohibited Acts During Moratorium. - During a moratorium period, it is unlawful for any person -

"(1) to engage in fishing within the moratorium area;

"(2) to land, or attempt to land, Atlantic striped bass that are caught, taken, or harvested in violation of paragraph (1);

"(3) to land lawfully harvested Atlantic striped bass within the boundaries of a coastal State when a moratorium declared under subsection (a) applies to that State; or

"(4) to fail to return to the water Atlantic striped bass to which the moratorium applies that are caught incidental to harvesting that occurs in the course of commercial or recreational fish catching activities, regardless of the physical condition of the striped bass when caught.

"(c) Civil Penalties. -

"(1) Civil penalty. - Any person who commits any act that is unlawful under subsection (b) shall be liable to the United States for a civil penalty as provided by section 308 of the Magnuson Act (16 U.S.C. 1858).

"(2) Civil forfeitures. -

"(A) In general. - Any vessel (including its gear,

equipment, appurtenances, stores, and cargo) used, and any fish (or the fair market value thereof) taken or retained, in any manner, in connection with, or as the result of, the commission of any act that is unlawful under subsection (b) shall be subject to forfeiture to the United States as provided in section 310 of the Magnuson Act (16 U.S.C. 1860).

"(B) Disposal of fish. - Any fish seized pursuant to this Act may be disposed of pursuant to the order of a court of competent jurisdiction, or, if perishable, in a manner prescribed in regulations.

"(d) Enforcement. - A person authorized by the Secretaries or the Secretary of the department in which the Coast Guard is operating may take any action to enforce a moratorium declared under subsection (a) that an officer authorized by the Secretary under section 311(b) of the Magnuson Act (16 U.S.C. 1861(b)) may take to enforce that Act (16 U.S.C. 1801 et seq.). The Secretaries may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal department or agency and of any agency of a State in carrying out that enforcement.

"(e) Regulations. - The Secretaries may issue regulations to implement this section.

"SEC. 6. CONTINUING STUDIES OF STRIPED BASS POPULATIONS.

"(a) In General. - For the purposes of carrying out this Act, the Secretaries shall conduct continuing, comprehensive studies of Atlantic striped bass stocks. These studies shall include, but shall not be limited to, the following:

"(1) Annual stock assessments, using fishery-dependent and fishery-independent data, for the purposes of extending the long-term population record generated by the annual striped bass study conducted by the Secretaries before 1994 and understanding the population dynamics of Atlantic striped bass.

"(2) Investigations of the causes of fluctuations in Atlantic striped bass populations.

"(3) Investigations of the effects of water quality, land use, and other environmental factors on the recruitment, spawning potential, mortality, and abundance of Atlantic striped bass populations, including the Delaware River population.

"(4) Investigations of -

"(A) the interactions between Atlantic striped bass and other fish, including bluefish, menhaden, mackerel, and other forage fish or possible competitors, stock assessments of these species, to the extent appropriate; and

"(B) the effects of interspecies predation and competition on the recruitment, spawning potential mortality, and abundance of Atlantic striped bass.

"(b) Socio-Economic Study. - The Secretaries, in consultation with with (sic) the Atlantic States Marine Fisheries Commission, shall conduct a study of the socio-economic benefits of the Atlantic striped bass resource. The Secretaries shall issue a report to the Congress concerning the findings of this study no later than September 30, 1998.

"(c) Reports. - The Secretaries shall make biennial reports to the Congress and to the Commission concerning the progress and findings of studies conducted under subsection (a) and shall make those reports public. Such reports shall, to the extent appropriate, contain recommendations of actions which could be taken to encourage the sustainable management of Atlantic striped bass.

"SEC. 7. AUTHORIZATION OF APPROPRIATIONS; COOPERATIVE AGREEMENTS.

"(a) Authorization. - For each of fiscal years 1998, 1999, and 2000, there are authorized to be appropriated to carry out this Act

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"(1) \$800,000 to the Secretary of Commerce; and

"(2) \$250,000 to the Secretary of the Interior.

"(b) Cooperative Agreements. - The Secretaries may enter into cooperative agreements with the Atlantic States Marine Fisheries Commission or with States, for the purpose of using amounts appropriated pursuant to this section to provide financial assistance for carrying out the purposes of this Act.

"SEC. 8. PUBLIC PARTICIPATION IN PREPARATION OF MANAGEMENT PLANS AND AMENDMENTS.

"(a) Standards and Procedures. - In order to ensure the opportunity for public participation in the preparation of management plans and amendments to management plans for Atlantic striped bass, the Commission shall prepare such plans and amendments in accordance with the standards and procedures established under section 805(a)(2) of the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5104(a)(2)).

"(b) Application. - Subsection (a) shall apply to management plans and amendments adopted by the Commission after the 6-month period beginning on the date of enactment of the Atlantic Striped Bass Conservation Act Amendments of 1997 (Dec. 16, 1997).

"SEC. 9. PROTECTION OF STRIPED BASS IN THE EXCLUSIVE ECONOMIC ZONE.

"(a) Regulation of Fishing in Exclusive Economic Zone. - The Secretary shall promulgate regulations governing fishing for Atlantic striped bass in the exclusive economic zone that the Secretary determines -

"(1) are consistent with the national standards set forth in section 301 of the Magnuson Act (16 U.S.C. 1851);

"(2) are compatible with the Plan and each Federal moratorium

in effect on fishing for Atlantic striped bass within the coastal waters of a coastal State;

"(3) ensure the effectiveness of State regulations on fishing for Atlantic striped bass within the coastal waters of a coastal State; and

"(4) are sufficient to assure the long-term conservation of Atlantic striped bass populations.

"(b) Consultation; Periodic Review of Regulations. - In preparing regulations under subsection (a), the Secretary shall consult with the Atlantic States Marine Fisheries Commission, the appropriate Regional Fishery Management Councils, and each affected Federal, State, and local government entity. The Secretary shall periodically review regulations promulgated under subsection (a), and if necessary to ensure their continued consistency with the requirements of subsection (a), shall amend those regulations.

"(c) Applicability of Magnuson Act Provisions. - The provisions of sections 307, 308, 309, 310, and 311 of the Magnuson Act (16 U.S.C. 1857, 1858, 1859, 1860, and 1861) regarding prohibited acts, civil penalties, criminal offenses, civil forfeitures, and enforcement shall apply with respect to regulations and any plan issued under subsection (a) of this section as if such regulations or plan were issued under the Magnuson Act (16 U.S.C. 1801 et seq.)."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1434, 1802, 5103, 5107b of this title.

16 USC Sec. 1852

01/26/98

TITLE 16 - CONSERVATION

CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT

SUBCHAPTER IV - NATIONAL FISHERY MANAGEMENT PROGRAM

Sec. 1852. Regional Fishery Management Councils

(a) Establishment

(1) There shall be established, within 120 days after April 13, 1976, eight Regional Fishery Management Councils, as follows:

(A) New England Council

The New England Fishery Management Council shall consist of the States of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except as provided in paragraph (3)). The New England Council shall have 17 voting members, including 11 appointed by the Secretary in accordance

with subsection (b)(2) of this section (at least one of whom shall be appointed from each such State).

(B) Mid-Atlantic Council

The Mid-Atlantic Fishery Management Council shall consist of the States of New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, and North Carolina and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except North Carolina, and as provided in paragraph (3)). The Mid-Atlantic Council shall have 21 voting members, including 13 appointed by the Secretary in accordance with subsection (b)(2) of this section (at least one of whom shall be appointed from each such State).

(C) South Atlantic Council

The South Atlantic Fishery Management Council shall consist of the States of North Carolina, South Carolina, Georgia, and Florida and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except as provided in paragraph (3)). The South Atlantic Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) of this section (at least one of whom shall be appointed from each such State).

(D) Caribbean Council

The Caribbean Fishery Management Council shall consist of the Virgin Islands and the Commonwealth of Puerto Rico and shall have authority over the fisheries in the Caribbean Sea and Atlantic Ocean seaward of such States (except as provided in paragraph (3)). The Caribbean Council shall have 7 voting members, including 4 appointed by the Secretary in accordance with subsection (b)(2) of this section (at least one of whom shall be appointed from each such State).

(E) Gulf Council

The Gulf of Mexico Fishery Management Council shall consist of the States of Texas, Louisiana, Mississippi, Alabama, and Florida and shall have authority over the fisheries in the Gulf of Mexico seaward of such States (except as provided in paragraph (3)). The Gulf Council shall have 17 voting members, including 11 appointed by the Secretary in accordance with subsection (b)(2) of this section (at least one of whom shall be appointed from each such State).

(F) Pacific Council

The Pacific Fishery Management Council shall consist of the States of California, Oregon, Washington, and Idaho and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Pacific Council shall have 14 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) of this section (at least one of whom shall be

appointed from each such State), and including one appointed from an Indian tribe with Federally (FOOTNOTE 1) recognized fishing rights from California, Oregon, Washington, or Idaho in accordance with subsection (b)(5) of this section.

(FOOTNOTE 1) So in original. Probably should not be capitalized.

(G) North Pacific Council

The North Pacific Fishery Management Council shall consist of the States of Alaska, Washington, and Oregon and shall have authority over the fisheries in the Arctic Ocean, Bering Sea, and Pacific Ocean seaward of Alaska. The North Pacific Council shall have 11 voting members, including 7 appointed by the Secretary in accordance with subsection (b)(2) of this section (5 of whom shall be appointed from the State of Alaska and 2 of whom shall be appointed from the State of Washington).

(H) Western Pacific Council

The Western Pacific Fishery Management Council shall consist of the States of Hawaii, American Samoa, Guam, and the Northern Mariana Islands and shall have authority over the fisheries in the Pacific Ocean seaward of such States and of the Commonwealths, territories, and possessions of the United States in the Pacific Ocean area. The Western Pacific Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) of this section (at least one of whom shall be appointed from each of the following States: Hawaii, American Samoa, Guam, and the Northern Mariana Islands).

(2) Each Council shall reflect the expertise and interest of the several constituent States in the ocean area over which such Council is granted authority.

(3) The Secretary shall have authority over any highly migratory species fishery that is within the geographical area of authority of more than one of the following Councils: New England Council, Mid-Atlantic Council, South Atlantic Council, Gulf Council, and Caribbean Council.

(b) Voting members

(1) The voting members of each Council shall be:

(A) The principal State official with marine fishery management responsibility and expertise in each constituent State, who is designated as such by the Governor of the State, so long as the official continues to hold such position, or the designee of such official.

(B) The regional director of the National Marine Fisheries Service for the geographic area concerned, or his designee, except that if two such directors are within such geographical area, the Secretary shall designate which of such directors shall be the voting member.

(C) The members required to be appointed by the Secretary in accordance with paragraphs (2) and (5).

(2)(A) The members of each Council required to be appointed by the Secretary must be individuals who, by reason of their occupational or other experience, scientific expertise, or training, are knowledgeable regarding the conservation and management, or the commercial or recreational harvest, of the fishery resources of the geographical area concerned. Within nine months after November 28, 1990, the Secretary shall, by regulation, prescribe criteria for determining whether an individual satisfies the requirements of this subparagraph.

(B) The Secretary, in making appointments under this section, shall, to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries under the jurisdiction of the Council. On January 31, 1991, and each year thereafter, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report on the actions taken by the Secretary to ensure that such fair and balanced apportionment is achieved. The report shall -

(i) list the fisheries under the jurisdiction of each Council, outlining for each fishery the type and quantity of fish harvested, fishing and processing methods employed, the number of participants, the duration and range of the fishery, and other distinguishing characteristics;

(ii) assess the membership of each Council in terms of the apportionment of the active participants in each such fishery; and

(iii) state the Secretary's plans and schedule for actions to achieve a fair and balanced apportionment on the Council for the active participants in any such fishery.

(C) The Secretary shall appoint the members of each Council from a list of individuals submitted by the Governor of each applicable constituent State. A Governor may not submit the names of individuals to the Secretary for appointment unless the Governor has determined that each such individual is qualified under the requirements of subparagraph (A) and unless the Governor has, to the extent practicable, first consulted with representatives of the commercial and recreational fishing interests of the State regarding those individuals. Each such list shall include the names and pertinent biographical data of not less than three individuals for each applicable vacancy and shall be accompanied by a statement by the Governor explaining how each such individual meets the requirements of subparagraph (A). The Secretary shall

review each list submitted by a Governor to ascertain if the individuals on the list are qualified for the vacancy on the basis of such requirements. If the Secretary determines that any individual is not qualified, the Secretary shall notify the appropriate Governor of that determination. The Governor shall then submit a revised list or resubmit the original list with an additional explanation of the qualifications of the individual in question. An individual is not eligible for appointment by the Secretary until that individual complies with the applicable financial disclosure requirements under subsection (k) (FOOTNOTE 2) of this section.

(FOOTNOTE 2) So in original. Probably should be subsection "(j)".

(D) Whenever the Secretary makes an appointment to a Council, the Secretary shall make a public announcement of such appointment not less than 45 days before the first day on which the individual is to take office as a member of the Council.

(3) Each voting member appointed to a Council by the Secretary in accordance with paragraphs (2) and (5) shall serve for a term of 3 years; except that the Secretary may designate a shorter term if necessary to provide for balanced expiration to terms of office. No member appointed after January 1, 1986, may serve more than three consecutive terms. Any term in which an individual was appointed to replace a member who left office during the term shall not be counted in determining the number of consecutive terms served by that Council member.

(4) Successors to the voting members of any Council shall be appointed in the same manner as the original voting members. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term.

(5)(A) The Secretary shall appoint to the Pacific Council one representative of an Indian tribe with Federally (FOOTNOTE 3) recognized fishing rights from California, Oregon, Washington, or Idaho from a list of not less than 3 individuals submitted by the tribal governments. The Secretary, in consultation with the Secretary of the Interior and tribal governments, shall establish by regulation the procedure for submitting a list under this subparagraph.

(FOOTNOTE 3) So in original. Probably should not be capitalized.

(B) Representation shall be rotated among the tribes taking into consideration -

- (i) the qualifications of the individuals on the list referred to in subparagraph (A),
- (ii) the various rights of the Indian tribes involved and

judicial cases that set forth how those rights are to be exercised, and

(iii) the geographic area in which the tribe of the representative is located.

(C) A vacancy occurring prior to the expiration of any term shall be filled in the same manner as set out in subparagraphs (A) and (B), except that the Secretary may use the list from which the vacating representative was chosen.

(6) The Secretary may remove for cause any member of a Council required to be appointed by the Secretary in accordance with paragraphs (FOOTNOTE 4) (2) or (5) if -

(FOOTNOTE 4) So in original. Probably should be "paragraph".

(A) the Council concerned first recommends removal by not less than two-thirds of the members who are voting members and submits such removal recommendation to the Secretary in writing together with a statement of the basis for the recommendation; or

(B) the member is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, to have committed an act prohibited by section 1857(1)(O) of this title.

(c) Nonvoting members

(1) The nonvoting members of each Council shall be:

(A) The regional or area director of the United States Fish and Wildlife Service for the geographical area concerned, or his designee.

(B) The Commander of the Coast Guard district for the geographical area concerned, or his designee; except that, if two Coast Guard districts are within such geographical area, the commander designated for such purpose by the commandant of the Coast Guard.

(C) The executive director of the Marine Fisheries Commission for the geographical area concerned, if any, or his designee.

(D) One representative of the Department of State designated for such purpose by the Secretary of State, or his designee.

(2) The Pacific Council shall have one additional nonvoting member who shall be appointed by, and serve at the pleasure of, the Governor of Alaska.

(d) Compensation and expenses

The voting members of each Council who are required to be appointed by the Secretary and who are not employed by the Federal Government or any State or local government, shall receive compensation at the daily rate for GS-15, step 7 of the General Schedule, when engaged in the actual performance of duties for such Council. The voting members of each Council, any nonvoting member described in subsection (c)(1)(C) of this section, and the nonvoting member appointed pursuant to subsection (c)(2) of this

section shall be reimbursed for actual expenses incurred in the performance of such duties, and other nonvoting members and Council staff members may be reimbursed for actual expenses.

(e) Transaction of business

(1) A majority of the voting members of any Council shall constitute a quorum, but one or more such members designated by the Council may hold hearings. All decisions of any Council shall be by majority vote of the voting members present and voting.

(2) The voting members of each Council shall select a Chairman for such Council from among the voting members.

(3) Each Council shall meet at appropriate times and places in any of the constituent States of the Council at the call of the Chairman or upon the request of a majority of its voting members.

(4) If any voting member of a Council disagrees with respect to any matter which is transmitted to the Secretary by such Council, such member may submit a statement to the Secretary setting forth the reasons for such disagreement. The regional director of the National Marine Fisheries Service serving on the Council, or the regional director's designee, shall submit such a statement, which shall be made available to the public upon request, if the regional director disagrees with any such matter.

(5) At the request of any voting member of a Council, the Council shall hold a roll call vote on any matter before the Council. The official minutes and other appropriate records of any Council meeting shall identify all roll call votes held, the name of each voting member present during each roll call vote, and how each member voted on each roll call vote.

(f) Staff and administration

(1) Each Council may appoint, and assign duties to, an executive director and such other full- and part-time administrative employees as the Secretary determines are necessary to the performance of its functions.

(2) Upon the request of any Council, and after consultation with the Secretary, the head of any Federal agency is authorized to detail to such Council, on a reimbursable basis, any of the personnel of such agency, to assist such Council in the performance of its functions under this chapter.

(3) The Secretary shall provide to each Council such administrative and technical support services as are necessary for the effective functioning of such Council.

(4) The Administrator of General Services shall furnish each Council with such offices, equipment, supplies, and services as he is authorized to furnish to any other agency or instrumentality of the United States.

(5) The Secretary and the Secretary of State shall furnish each Council with relevant information concerning foreign fishing and

international fishery agreements.

(6) Each Council shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this chapter, in accordance with such uniform standards as are prescribed by the Secretary. The procedures of a Council, and of its scientific and statistical committee and advisory panels established under subsection (g) of this section, must be consistent with the procedural guidelines set forth in subsection (i)(2) of this section. Each Council shall publish and make available to the public a statement of its organization, practices, and procedures.

(7) The Secretary shall pay -

(A) the compensation and expenses provided for in subsection (d) of this section;

(B) appropriate compensation to employees appointed under paragraph (1);

(C) the amounts required for reimbursement of other Federal agencies under paragraphs (2) and (4);

(D) the actual expenses of the members of the committees and panels established under subsection (g) of this section; and

(E) such other costs as the Secretary determines are necessary to the performance of the functions of the Councils.

(g) Committees and panels

(1) Each Council shall establish and maintain, and appoint the members of, a scientific and statistical committee to assist it in the development, collection, and evaluation of such statistical, biological, economic, social, and other scientific information as is relevant to such Council's development and amendment of any fishery management plan.

(2) Each Council shall establish such other advisory panels as are necessary or appropriate to assist it in carrying out its functions under this chapter.

(3)(A) Each Council shall establish and maintain a fishing industry advisory committee which shall provide information and recommendations on, and assist in the development of, fishery management plans and amendments to such plans.

(B) Appointments to a committee established under subparagraph (A) shall be made by each Council in such a manner as to provide fair representation to commercial fishing interests in the geographical area of authority of the Council.

(4) The Secretary shall establish advisory panels to assist in the collection and evaluation of information relevant to the development of any fishery management plan or plan amendment for a fishery to which subsection (a)(3) of this section applies. Each advisory panel shall participate in all aspects of the development of the plan or amendment; be balanced in its representation of

commercial, recreational, and other interests; and consist of not less than 7 individuals who are knowledgeable about the fishery for which the plan or amendment is developed, selected from among -

(A) members of advisory committees and species working groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species; and

(B) other interested persons.

(5) Decisions and recommendations made by committees and panels established under this subsection shall be considered to be advisory in nature.

(h) Functions

Each Council shall, in accordance with the provisions of this chapter -

(1) for each fishery under its authority that requires conservation and management, prepare and submit to the Secretary (A) a fishery management plan, and (B) amendments to each such plan that are necessary from time to time (and promptly whenever changes in conservation and management measures in another fishery substantially affect the fishery for which such plan was developed);

(2) prepare comments on any application for foreign fishing transmitted to it under section 1824(b)(4)(C) of this title or section 1824(d) of this title, and any fishery management plan or amendment transmitted to it under section 1854(c)(4) of this title;

(3) conduct public hearings, at appropriate times and in appropriate locations in the geographical area concerned, so as to allow all interested persons an opportunity to be heard in the development of fishery management plans and amendments to such plans, and with respect to the administration and implementation of the provisions of this chapter (and for purposes of this paragraph, the term "geographical area concerned" may include an area under the authority of another Council if the fish in the fishery concerned migrate into, or occur in, that area or if the matters being heard affect fishermen of that area; but not unless such other Council is first consulted regarding the conduct of such hearings within its area);

(4) submit to the Secretary such periodic reports as the Council deems appropriate, and any other relevant report which may be requested by the Secretary;

(5) review on a continuing basis, and revise as appropriate, the assessments and specifications made pursuant to section 1853(a)(3) and (4) of this title with respect to the optimum yield from, the capacity and extent to which United States fish processors will process United States harvested fish from, and the total allowable level of foreign fishing in, each fishery

(except as provided in section (FOOTNOTE 5) subsection (a)(3) of this section) within its geographical area of authority; and (FOOTNOTE 5) So in original. The word "section" probably should not appear.

(6) conduct any other activities which are required by, or provided for in, this chapter or which are necessary and appropriate to the foregoing functions.

(i) Procedural matters

(1) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Councils or to the scientific and statistical committees or advisory panels established under subsection (g) of this section.

(2) The following guidelines apply with respect to the conduct of business at meetings of a Council, and of the scientific and statistical committee and advisory panels established under subsection (g) of this section:

(A) Unless closed in accordance with paragraph (3), each regular meeting and each emergency meeting shall be open to the public.

(B) Emergency meetings shall be held at the call of the chairman or equivalent presiding officer.

(C) Timely public notice of each regular meeting and each emergency meeting, including the time, place, and agenda of the meeting, shall be published in local newspapers in the major fishing ports of the region (and in other major fishing ports having a direct interest in the affected fishery) and such notice may be given by such other means as will result in wide publicity. Timely notice of each regular meeting shall also be published in the Federal Register. The published agenda of the meeting may not be modified to include additional matters for Council action without public notice or within 14 days prior to the meeting date, unless such modification is to address an emergency action under section 1855(c) of this title, in which case public notice shall be given immediately.

(D) Interested persons shall be permitted to present oral or written statements regarding the matters on the agenda at meetings. All written information submitted to a Council by an interested person shall include a statement of the source and date of such information. Any oral or written statement shall include a brief description of the background and interests of the person in the subject of the oral or written statement.

(E) Detailed minutes of each meeting of the Council, except for any closed session, shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all statements filed. The Chairman shall certify the accuracy of the

minutes of each such meeting and submit a copy thereof to the Secretary. The minutes shall be made available to any court of competent jurisdiction.

(F) Subject to the procedures established under paragraph (4), and the guidelines prescribed by the Secretary under section 1881a(b) of this title, relating to confidentiality, the administrative record, including minutes required under subparagraph (E), of each meeting, and records or other documents which were made available to or prepared for or by the Council, committee, or panel incident to the meeting, shall be available for public inspection and copying at a single location in the offices of the Council or the Secretary, as appropriate.

(3)(A) Each Council, scientific, and statistical committee, and advisory panel -

(i) shall close any meeting, or portion thereof, that concerns matters or information that bears a national security classification; and

(ii) may close any meeting, or portion thereof, that concerns matters or information that pertains to national security, employment matters, or briefings on litigation in which the Council is interested.

Subparagraphs (D) and (F) of paragraph (2) shall not apply to any meeting or portion thereof that is so closed.

(B) If any meeting or portion is closed, the Council concerned shall notify local newspapers in the major fishing ports within its region (and in other major, affected fishing ports), including in that notification the time and place of the meeting. This subparagraph (FOOTNOTE 6) does not require notification regarding any brief closure of a portion of a meeting in order to discuss employment or other internal administrative matters.

(FOOTNOTE 6) So in original. Probably should be "subparagraph".

(4) Each Council shall establish appropriate procedures applicable to it and to its committee and advisory panels for ensuring the confidentiality of the statistics that may be submitted to it by Federal or State authorities, and may be voluntarily submitted to it by private persons; including, but not limited to, procedures for the restriction of Council employee access and the prevention of conflicts of interest; except that such procedures, in the case of statistics submitted to the Council by a State or by the Secretary under section 1881a(b) of this title, must be consistent with the laws and regulations of that State, or with the procedures of the Secretary, as the case may be, concerning the confidentiality of the statistics.

(5) Each Council shall specify those procedures that are necessary or appropriate to ensure that the committees and advisory

panels established under subsection (g) of this section are involved, on a continuing basis, in the development and amendment of fishery management plans.

(6) At any time when a Council determines it appropriate to consider new information from a State or Federal agency or from a Council advisory body, the Council shall give comparable consideration to new information offered at that time by interested members of the public. Interested parties shall have a reasonable opportunity to respond to new data or information before the Council takes final action on conservation and management measures.

(j) Disclosure of financial interest and recusal

(1) For the purposes of this subsection -

(A) the term "affected individual" means an individual who -

(i) is nominated by the Governor of a State for appointment as a voting member of a Council in accordance with subsection (b)(2) of this section; or

(ii) is a voting member of a Council appointed -

(I) under subsection (b)(2) of this section; or

(II) under subsection (b)(5) of this section who is not subject to disclosure and recusal requirements under the laws of an Indian tribal government; and

(B) the term "designated official" means a person with expertise in Federal conflict-of-interest requirements who is designated by the Secretary, in consultation with the Council, to attend Council meetings and make determinations under paragraph (7)(B).

(2) Each affected individual must disclose any financial interest held by -

(A) that individual;

(B) the spouse, minor child, or partner of that individual; and

(C) any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee;

in any harvesting, processing, or marketing activity that is being, or will be, undertaken within any fishery over which the Council concerned has jurisdiction.

(3) The disclosure required under paragraph (2) shall be made -

(A) in the case of an affected individual referred to in paragraph (1)(A)(i), before appointment by the Secretary; and

(B) in the case of an affected individual referred to in paragraph (1)(A)(ii), within 45 days of taking office.

(4) An affected individual referred to in paragraph (1)(A)(ii) must update his or her disclosure form at any time any such financial interest is acquired, or substantially changed, by any person referred to in paragraph (2)(A), (B), or (C).

(5) The financial interest disclosures required by this

subsection shall -

(A) be made on such forms, in accordance with such procedures, and at such times, as the Secretary shall by regulation prescribe;

(B) be kept on file, and made available for public inspection at reasonable hours, at the Council offices; and

(C) be kept on file by the Secretary for use in reviewing determinations under paragraph (7)(B) and made available for public inspection at reasonable hours.

(6) The participation by an affected individual referred to in paragraph (1)(A)(ii) in an action by a Council during any time in which that individual is not in compliance with the regulations prescribed under paragraph (5) may not be treated as cause for the invalidation of that action.

(7)(A) After the effective date of regulations promulgated under subparagraph (F) of this paragraph, an affected individual required to disclose a financial interest under paragraph (2) shall not vote on a Council decision which would have a significant and predictable effect on such financial interest. A Council decision shall be considered to have a significant and predictable effect on a financial interest if there is a close causal link between the Council decision and an expected and substantially disproportionate benefit to the financial interest of the affected individual relative to the financial interests of other participants in the same gear type or sector of the fishery. An affected individual who may not vote may participate in Council deliberations relating to the decision after notifying the Council of the voting recusal and identifying the financial interest that would be affected.

(B) At the request of an affected individual, or upon the initiative of the appropriate designated official, the designated official shall make a determination for the record whether a Council decision would have a significant and predictable effect on a financial interest.

(C) Any Council member may submit a written request to the Secretary to review any determination by the designated official under subparagraph (B) within 10 days of such determination. Such review shall be completed within 30 days of receipt of the request.

(D) Any affected individual who does not vote in a Council decision in accordance with this subsection may state for the record how he or she would have voted on such decision if he or she had voted.

(E) If the Council makes a decision before the Secretary has reviewed a determination under subparagraph (C), the eventual ruling may not be treated as cause for the invalidation or reconsideration by the Secretary of such decision.

(F) The Secretary, in consultation with the Councils and by not

later than one year from October 11, 1996, shall promulgate regulations which prohibit an affected individual from voting in accordance with subparagraph (A), and which allow for the making of determinations under subparagraphs (B) and (C).

(8) Section 208 of title 18 does not apply to an affected individual referred to in paragraph (1)(A)(ii) during any time in which that individual is in compliance with the regulations prescribed under paragraph (5).

(Pub. L. 94-265, title III, Sec. 302, Apr. 13, 1976, 90 Stat. 347; Pub. L. 95-354, Sec. 5(1), Aug. 28, 1978, 92 Stat. 521; Pub. L. 96-561, title II, Sec. 234, Dec. 22, 1980, 94 Stat. 3299; Pub. L. 97-453, Sec. 5, Jan. 12, 1983, 96 Stat. 2484; Pub. L. 99-659, title I, Sec. 104(a)(1), (b)-(e)(1), Nov. 14, 1986, 100 Stat. 3709, 3710; Pub. L. 101-627, title I, Sec. 108(a)-(j), 120(c), Nov. 28, 1990, 104 Stat. 4444-4446, 4459; Pub. L. 102-582, title IV, Sec. 403, Nov. 2, 1992, 106 Stat. 4909; Pub. L. 104-297, title I, Sec. 107, Oct. 11, 1996, 110 Stat. 3570.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (i)(1), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1996 - Subsec. (a). Pub. L. 104-297, Sec. 107(a)(1), (2), (6), inserted "(1)" before "There shall be established", redesignated former pars. (1) to (8) as subpars. (A) to (H), respectively, adjusted margin of last sentence, and inserted "(2)" before "Each Council".

Subsec. (a)(1)(A). Pub. L. 104-297, Sec. 107(a)(3), substituted "paragraph (3)" for "section 1854(f)(3) of this title".

Subsec. (a)(1)(B). Pub. L. 104-297, Sec. 107(a)(3), (4), substituted "Virginia, and North Carolina" for "and Virginia", inserted "North Carolina, and" after "except", and substituted "paragraph (3)" for "section 1854(f)(3) of this title", "21 voting" for "19 voting", and "13 appointed" for "12 appointed".

Subsec. (a)(1)(C) to (E). Pub. L. 104-297, Sec. 107(a)(3), substituted "paragraph (3)" for "section 1854(f)(3) of this title".

Subsec. (a)(1)(F). Pub. L. 104-297, Sec. 107(a)(5), amended heading and text of subpar. (F) generally. Prior to amendment, text read as follows: "The Pacific Fishery Management Council shall consist of the States of California, Oregon, Washington, and

Idaho and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Pacific Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) of this section (at least one of whom shall be appointed from each such State)."

Subsec. (a)(3). Pub. L. 104-297, Sec. 107(a)(7), added par. (3).

Subsec. (b)(1)(C). Pub. L. 104-297, Sec. 107(b)(1), substituted "paragraphs (2) and (5)" for "subsection (b)(2) of this section".

Subsec. (b)(3). Pub. L. 104-297, Sec. 107(b)(1), (2), substituted "paragraphs (2) and (5)" for "subsection (b)(2) of this section" and "Any term in which an individual was appointed to replace a member who left office during the term shall not be counted in determining the number of consecutive terms served by that Council member." for "Any term completed prior to December 31, 1987, shall not be counted in determining the number of consecutive terms served by any Council member."

Subsec. (b)(5), (6). Pub. L. 104-297, Sec. 107(b)(3), added pars. (5) and (6) and struck out former par. (5) which read as follows: "The Secretary may remove for cause any member of a Council required to be appointed by the Secretary in accordance with subsection (b)(2) of this section if the Council concerned first recommends removal by not less than two-thirds of the members who are voting members. A removal recommendation of a Council must be in writing and accompanied by a statement of the reasons upon which the recommendation is based."

Subsec. (d). Pub. L. 104-297, Sec. 107(c), substituted "each Council who are required to be appointed by the Secretary and" for "each Council," and "shall receive compensation at the daily rate for GS-15, step 7" for "shall, until January 1, 1992, receive compensation at the daily rate for GS-18 of the General Schedule, and after December 31, 1991, at the daily rate for GS-16".

Subsec. (e)(5). Pub. L. 104-297, Sec. 107(d), added par. (5).

Subsec. (g)(4), (5). Pub. L. 104-297, Sec. 107(e), added par. (4) and redesignated former par. (4) as (5).

Subsec. (h)(1). Pub. L. 104-297, Sec. 107(f)(1), added par. (1) and struck out former par. (1) which read as follows: "prepare and submit to the Secretary a fishery management plan with respect to each fishery (except as provided in section 1854(f)(3) of this title) within its geographical area of authority that requires conservation and management and, from time to time, such amendments to each such plan as are necessary;"

Subsec. (h)(2). Pub. L. 104-297, Sec. 107(f)(2), substituted "section 1824(b)(4)(C) of this title or section 1824(d) of this title" for "section 1824(b)(4)(C) of this title" and "section

1854(c)(4)" for "section 1854(c)(2)".

Subsec. (h)(5). Pub. L. 104-297, Sec. 107(f)(3), substituted "subsection (a)(3) of this section" for "1854(f)(3) of this title".

Subsec. (i). Pub. L. 104-297, Sec. 107(g), redesignated subsec. (j) as (i) and struck out heading and text of former subsec. (i).

Text read as follows:

"(1) Each Council -

"(A) may comment on and make recommendations concerning any activity undertaken, or proposed to be undertaken, by any State or Federal agency that, in the view of the Council, may affect the habitat of a fishery resource under its jurisdiction; and

"(B) shall comment on and make recommendations concerning any such activity that, in the view of the Council, is likely to substantially affect the habitat of an anadromous fishery resource under its jurisdiction.

"(2) Within 45 days after receiving a comment or recommendation under paragraph (1) from a Council, a Federal agency shall provide a detailed response, in writing, to the Council regarding the matter. In the case of a comment or recommendation under paragraph (1)(B), the response shall include a description of measures being considered by the agency for mitigating or offsetting the impact of the activity on such habitat."

Subsec. (i)(1). Pub. L. 104-297, Sec. 107(h)(1), substituted "established under subsection (g) of this section" for "of the Councils".

Subsec. (i)(2). Pub. L. 104-297, Sec. 107(h)(2), substituted "established under subsection (g) of this section" for "of a Council" in introductory provisions.

Subsec. (i)(2)(C). Pub. L. 104-297, Sec. 107(h)(3), (4), struck out "Council's" after "fishing ports of the" and inserted at end "The published agenda of the meeting may not be modified to include additional matters for Council action without public notice or within 14 days prior to the meeting date, unless such modification is to address an emergency action under section 1855(c) of this title, in which case public notice shall be given immediately."

Subsec. (i)(2)(D). Pub. L. 104-297, Sec. 107(h)(5), inserted at end "All written information submitted to a Council by an interested person shall include a statement of the source and date of such information. Any oral or written statement shall include a brief description of the background and interests of the person in the subject of the oral or written statement."

Subsec. (i)(2)(E). Pub. L. 104-297, Sec. 107(h)(6), added subpar. (E) and struck out former subpar. (E) which read as follows:

"Minutes of each meeting shall be kept and shall contain a record

of the persons present, an accurate description of matters discussed and conclusions reached, and copies of all statements filed."

Subsec. (i)(2)(F). Pub. L. 104-297, Sec. 107(h)(7)-(9), struck out "by the Council" after "procedures established", substituted "section 1881a(b)" for "section 1853(d)", and inserted "or the Secretary, as appropriate" after "of the Council".

Subsec. (i)(4). Pub. L. 104-297, Sec. 107(h)(10), substituted "section 1881a(b)" for "section 1853(d)".

Subsec. (j). Pub. L. 104-297, Sec. 107(g), (i)(1), redesignated subsec. (k) as (j) and inserted "and recusal" at the end of subsection heading. Former subsec. (j) redesignated (i).

Subsec. (j)(1). Pub. L. 104-297, Sec. 107(i)(2), added par. (1) and struck out former par. (1) which read as follows: "For purposes of this subsection, the term 'affected individual' means an individual who -

"(A) is nominated by the Governor of a State for appointment as a voting member of a Council in accordance with subsection (b)(2) of this section;

"(B) is a voting member of a Council appointed under subsection (b)(2) of this section; or

"(C) is the executive director of a Council."

Subsec. (j)(3)(A). Pub. L. 104-297, Sec. 107(i)(3), substituted "(1)(A)(i)" for "(1)(A)".

Subsec. (j)(3)(B), (4). Pub. L. 104-297, Sec. 107(i)(4), (5), substituted "(1)(A)(ii)" for "(1)(B) or (C)".

Subsec. (j)(5)(C). Pub. L. 104-297, Sec. 107(i)(6), added subpar. (C).

Subsec. (j)(6). Pub. L. 104-297, Sec. 107(i)(7), substituted "(1)(A)(ii)" for "(1)(B) or (C)".

Subsec. (j)(7). Pub. L. 104-297, Sec. 107(i)(8), added par. (7). Former par. (7) redesignated (8).

Subsec. (j)(8). Pub. L. 104-297, Sec. 107(i)(9), substituted "(1)(A)(ii)" for "(1)(B) or (C)".

Pub. L. 104-297, Sec. 107(i)(8), redesignated par. (7) as (8).

Subsec. (k). Pub. L. 104-297, Sec. 107(g), redesignated subsec. (k) as (j).

1992 - Subsec. (b)(3). Pub. L. 102-582 substituted "December 31, 1987" for "January 1, 1986".

1990 - Subsec. (a). Pub. L. 101-627, Sec. 108(a), inserted "(except as provided in section 1854(f)(3) of this title)" before period at end of first sentence in pars. (1) to (5).

Subsec. (b)(2). Pub. L. 101-627, Sec. 108(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

"(A) The members of each Council required to be appointed by the

Secretary must be individuals who are knowledgeable and experienced with regard to the conservation and management, or the recreational or commercial harvest, of the fishery resources of the geographical area concerned. The Secretary, in making appointments under this section, shall, to the extent practicable, ensure a fair apportionment, on a rotating or other basis, of the active participants (or their representatives) involved in the fisheries under Council jurisdiction.

"(B) The Secretary shall appoint the members of each Council from a list of individuals submitted by the Governor of each applicable constituent State. A Governor may not submit the names of individuals to the Secretary for appointment unless the Governor has, to the extent practicable, first consulted with representatives of the commercial and recreational fishing interests of the state regarding those individuals. Each such list shall include the names and pertinent biographical data of not less than three individuals for each applicable vacancy. The Secretary shall review each list submitted by a Governor to ascertain if the individuals on the list are qualified for the vacancy on the basis of the required knowledge and experience required by subparagraph (A). If the Secretary determines that any individual is not qualified, he shall notify the appropriate Governor of that determination. The Governor shall then submit a revised list or resubmit the original list with an additional explanation of the qualifications of the individual in question. An individual is not eligible for appointment by the Secretary until that individual complies with the applicable financial disclosure requirements under subsection (k) of this section.

"(C) Whenever the Secretary makes an appointment to a Council, he shall make a public announcement of such appointment not less than 45 days before the first day on which the individual is to take office as a member of the Council."

Subsec. (b)(3). Pub. L. 101-627, Sec. 108(c), inserted at end
"No member appointed after January 1, 1986, may serve more than three consecutive terms. Any term completed prior to January 1, 1986, shall not be counted in determining the number of consecutive terms served by any Council member."

Subsec. (d). Pub. L. 101-627, Sec. 108(d), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "The voting members of each Council, who are not employed by the Federal Government or any State or local government, shall receive compensation at the daily rate for GS-18 of the General Schedule when engaged in the actual performance of duties for such Council. The voting members of each Council, any nonvoting member described in subsection (c)(1)(C) of this section, and the nonvoting member appointed pursuant to subsection (c)(2) of this section shall be

reimbursed for actual expenses incurred in the performance of such duties, and other nonvoting members may be reimbursed for actual expenses."

Subsec. (e)(3). Pub. L. 101-627, Sec. 108(e)(1), substituted "at appropriate times and places in any of the constituent States of the Council" for "in the geographical area concerned".

Subsec. (e)(4). Pub. L. 101-627, Sec. 108(e)(2), inserted at end "The regional director of the National Marine Fisheries Service serving on the Council, or the regional director's designee, shall submit such a statement, which shall be made available to the public upon request, if the regional director disagrees with any such matter."

Subsec. (g)(3), (4). Pub. L. 101-627, Sec. 108(f), added pars. (3) and (4).

Subsec. (h). Pub. L. 101-627, Sec. 108(g), inserted "(except as provided in section 1854(f)(3) of this title)" before "within its geographical" in pars. (1) and (5).

Subsec. (i). Pub. L. 101-627, Sec. 108(h), amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: "Each Council may comment on, or make recommendations concerning, any activity undertaken, or proposed to be undertaken, by any State or Federal agency that, in the view of the Council, may affect the habitat of a fishery resource under its jurisdiction. Within 45 days after receiving such a comment or recommendation from a Council, a Federal agency must provide a detailed response, in writing, to the Council regarding the matter."

Subsec. (j)(3)(A). Pub. L. 101-627, Sec. 108(i)(1), substituted period for semicolon in cl. (ii), and in concluding provisions struck out "and if any meeting or portion is closed, the Council, committee, or panel concerned shall publish notice of the closure in local newspapers in the major fishing ports within its region (and in other major, affected fishing ports), including the time and place of the meeting." before "Subparagraphs (D) and (F)" and inserted "of paragraph (2)" after "Subparagraphs (D) and (F)".

Subsec. (j)(3)(B). Pub. L. 101-627, Sec. 108(i)(2), added subpar. (B).

Subsec. (j)(4). Pub. L. 101-627, Sec. 120(c), substituted "Council employee" for "council employee".

Subsec. (j)(6). Pub. L. 101-627, Sec. 108(j), added par. (6).

1986 - Subsec. (b)(2)(A). Pub. L. 99-659, Sec. 104(a)(1)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "The members of each Council required to be appointed by the Secretary must be individuals who are knowledgeable or experienced with regard to the management, conservation, or recreational or commercial harvest of the fishery

resources of the geographical area concerned."

Subsec. (b)(2)(B). Pub. L. 99-659, Sec. 104(a)(1)(B), inserted provision that a Governor may not submit the names of individuals to the Secretary for appointment unless the Governor has, to the extent practicable, first consulted with representatives of the commercial and recreational fishing interests of the state regarding those individuals, substituted "knowledge and experience" for "knowledge or experience", and inserted provision that an individual is not eligible for appointment by the Secretary until that individual complies with applicable financial disclosure requirements under subsec. (k) of this section.

Subsec. (b)(3). Pub. L. 99-659, Sec. 104(a)(1)(C), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "Each voting member appointed to a Council by the Secretary in accordance with subsection (b)(2) of this section shall serve for a term of 3 years; except that, with respect to the members initially so appointed, the Secretary shall designate up to one-third thereof to serve for a term of 1 year, up to one-third thereof to serve for a term of 2 years, and the remaining such members to serve for a term of 3 years."

Subsec. (i). Pub. L. 99-659, Sec. 104(b), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 99-659, Sec. 104(b)(1), redesignated former subsec. (i) as (j).

Subsec. (j)(4). Pub. L. 99-659, Sec. 104(c), substituted "; except that such procedures, in the case of statistics submitted to the Council by a State or by the Secretary under section 1853(d) of this title, must be consistent with the laws and regulations of that State, or with the procedures of the Secretary, as the case may be, concerning the confidentiality of the statistics" for "; except that such procedures must, in the case of statistics submitted to the Council by a State, be consistent with the laws and regulations of that State concerning the confidentiality of such statistics".

Subsec. (j)(5). Pub. L. 99-659, Sec. 104(d), added par. (5).

Subsec. (k). Pub. L. 99-659, Sec. 104(e)(1), added subsec. (k).

1983 - Subsec. (a)(1) to (7). Pub. L. 97-453, Sec. 5(1)(A), substituted "in accordance with subsection (b)(2)" for "pursuant to subsection (b)(1)(C)" wherever appearing.

Subsec. (a)(8). Pub. L. 97-453, Sec. 5(1)(B), substituted provision that the Western Pacific Fishery Management Council shall consist of the States of Hawaii, American Samoa, Guam, and the Northern Mariana Islands and shall have authority over the fisheries in the Pacific Ocean seaward of such States and of the Commonwealths, territories, and possessions of the United States in the Pacific Ocean area, for provision that the Western Pacific

Fishery Management Council would consist of the State of Hawaii, American Samoa, and Guam and have authority over the fisheries in the Pacific Ocean seaward of such States, and provision that the Western Pacific Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) of this section at least one of whom shall be appointed from each of Hawaii, American Samoa, Guam, and the Northern Mariana Islands, for provision that the Western Pacific Council would have 11 voting members, including 7 appointed by the Secretary pursuant to former subsection (b)(1)(C) of this section (at least one of whom would be appointed from each such State).

Subsec. (b)(1)(C). Pub. L. 97-453, Sec. 5(2)(A), substituted reference to subsec. (b)(2) of this section for characterization of the members to be appointed as members of a list of qualified individuals submitted by the Governor of each applicable constituent State, that with respect to initial appointments, such Governors submit such lists to the Secretary as soon as practicable, not later than 45 days after April 13, 1976, that "list of qualified individuals" included the names (including pertinent biographical data) of not less than three such individuals for each applicable vacancy, and that "qualified individual" meant an individual knowledgeable or experienced with regard to the management, conservation, or recreational or commercial harvest, of the fishery resources of the geographical area concerned.

Subsec. (b)(2) to (5). Pub. L. 97-453, Sec. 5(2)(B)-(E), added pars. (2) and (5), redesignated existing pars. (2) and (3) as (3) and (4), respectively, and in par. (3), as redesignated, substituted "by the Secretary in accordance with subsection (b)(2) of this section" for "pursuant to paragraph (1)(C)" after "appointed to a Council".

Subsec. (f)(6). Pub. L. 97-453, Sec. 5(3), inserted requirement that the procedures of a Council and associated committees and panels be consistent with the procedural guidelines set forth in subsec. (i)(2).

Subsec. (h)(1). Pub. L. 97-453, Sec. 5(4)(A), inserted "that requires conservation and management" after "authority".

Subsec. (h)(2). Pub. L. 97-453, Sec. 5(4)(B), substituted "section 1824(b)(4)(C)" for "section 1824(b)(4)(B)".

Subsec. (h)(3). Pub. L. 97-453, Sec. 5(4)(C), inserted parenthetical definition of "geographical area concerned".

Subsec. (h)(4). Pub. L. 97-453, Sec. 5(4)(D), struck out subpar. (A) which provided for a report, before Feb. 1 of each year, on the Council's activities during the immediately preceding calendar year, and struck out the subparagraph designators before subpars. (B) and (C).

Subsec. (i). Pub. L. 97-453, Sec. 5(5), added subsec. (i).
1980 - Subsec. (d). Pub. L. 96-561 inserted provision that other nonvoting members may be reimbursed for actual expenses.

1978 - Subsec. (h)(5). Pub. L. 95-354 inserted provisions relating to capacity and extent to which United States fish processors will process harvested fish.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 104(a)(2) of Pub. L. 99-659 provided that: "The amendments made by paragraph (1) (amending this section) shall apply with respect to voting members of regional fishery management councils who are appointed, and to individuals who are nominated for appointment as voting members, on or after the date of the enactment of this Act (Nov. 14, 1986)."

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. Committee on Merchant Marine and Fisheries of House of Representatives treated as referring to Committee on Resources of House of Representatives in case of provisions relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography by section 1(b)(3) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

DISCLOSURE OF FINANCIAL INTEREST BY INCUMBENT VOTING MEMBERS AND EXECUTIVE DIRECTORS

Section 104(e)(2) of Pub. L. 99-659 provided that for purposes of applying subsec. (k) of this section to voting members and executive directors of regional fishery management councils who were serving in those capacities on date on which regulations prescribed to carry out subsec. (k) first took effect, each such member or director must file a disclosure form under subsec. (k) within 45 days after that date.

DIRECTIONS REGARDING FISHERY MANAGEMENT COUNCIL MEMBERSHIP

Section 113 of Pub. L. 99-659 provided that: "Notwithstanding section 302 of the Act (16 U.S.C. 1852) and effective on and after the date of the enactment of this Act (Nov. 14, 1986), the Secretary shall take action to ensure, to the extent practicable, that those persons dependent for their livelihood upon the fisheries within the respective jurisdictions of the Regional Fishery Management Councils are fairly represented as voting members of the Councils."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 971b, 1362, 1379, 1433, 1445a, 1802, 1854, 1855, 1857, 1882, 2803, 2804, 3602, 5102, 5601 of this title; title 30 section 1415; title 43 section 1474d.

16 USC Sec. 1853

01/26/98

TITLE 16 - CONSERVATION

CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT

SUBCHAPTER IV - NATIONAL FISHERY MANAGEMENT PROGRAM

Sec. 1853. Contents of fishery management plans

(a) Required provisions

Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall -

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are -

(A) necessary and appropriate for the conservation and management of the fishery, to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery;

(B) described in this subsection or subsection (b) of this section, or both; and

(C) consistent with the national standards, the other provisions of this chapter, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interests in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;

(4) assess and specify -

(A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3),

(B) the portion of such optimum yield which, on an annual

basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing, and

(C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;

(5) specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, and charter fishing in the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors, (FOOTNOTE 1)

(FOOTNOTE 1) So in original. The comma probably should be a semicolon.

(6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;

(7) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 1855(b)(1)(A) of this title, minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat;

(8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 1854(a) of this title (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan;

(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on -

(A) participants in the fisheries and fishing communities affected by the plan or amendment; and

(B) participants in the fisheries conducted in adjacent areas

under the authority of another Council, after consultation with such Council and representatives of those participants;

(10) specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery;

(11) establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority -

(A) minimize bycatch; and

(B) minimize the mortality of bycatch which cannot be avoided;

(12) assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;

(13) include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors; and

(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery.

(b) Discretionary provisions

Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may -

(1) require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to -

(A) any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone or for anadromous species or Continental Shelf fishery resources beyond such zone;

(B) the operator of any such vessel; or

(C) any United States fish processor who first receives fish that are subject to the plan;

(2) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(3) establish specified limitations which are necessary and appropriate for the conservation and management of the fishery on the -

(A) catch of fish (based on area, species, size, number, weight, sex, bycatch, total biomass, or other factors);

(B) sale of fish caught during commercial, recreational, or charter fishing, consistent with any applicable Federal and State safety and quality requirements; and

(C) transshipment or transportation of fish or fish products under permits issued pursuant to section 1824 of this title;

(4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this chapter;

(5) incorporate (consistent with the national standards, the other provisions of this chapter, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery;

(6) establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account -

(A) present participation in the fishery,

(B) historical fishing practices in, and dependence on, the fishery,

(C) the economics of the fishery,

(D) the capability of fishing vessels used in the fishery to engage in other fisheries,

(E) the cultural and social framework relevant to the fishery and any affected fishing communities, and

(F) any other relevant considerations;

(7) require fish processors who first receive fish that are subject to the plan to submit data (other than economic data) which are necessary for the conservation and management of the fishery;

(8) require that one or more observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if the facilities of the vessel for the quartering of an observer, or for carrying out observer

functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized;

(9) assess and specify the effect which the conservation and management measures of the plan will have on the stocks of naturally spawning anadromous fish in the region;

(10) include, consistent with the other provisions of this chapter, conservation and management measures that provide harvest incentives for participants within each gear group to employ fishing practices that result in lower levels of bycatch or in lower levels of the mortality of bycatch;

(11) reserve a portion of the allowable biological catch of the fishery for use in scientific research; and

(12) prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

(c) Proposed regulations

Proposed regulations which the Council deems necessary or appropriate for the purposes of -

(1) implementing a fishery management plan or plan amendment shall be submitted to the Secretary simultaneously with the plan or amendment under section 1854 of this title; and

(2) making modifications to regulations implementing a fishery management plan or plan amendment may be submitted to the Secretary at any time after the plan or amendment is approved under section 1854 of this title.

(d) Individual fishing quotas

(1)(A) A Council may not submit and the Secretary may not approve or implement before October 1, 2000, any fishery management plan, plan amendment, or regulation under this chapter which creates a new individual fishing quota program.

(B) Any fishery management plan, plan amendment, or regulation approved by the Secretary on or after January 4, 1995, which creates any new individual fishing quota program shall be repealed and immediately returned by the Secretary to the appropriate Council and shall not be resubmitted, reapproved, or implemented during the moratorium set forth in subparagraph (A).

(2)(A) No provision of law shall be construed to limit the authority of a Council to submit and the Secretary to approve the termination or limitation, without compensation to holders of any limited access system permits, of a fishery management plan, plan amendment, or regulation that provides for a limited access system, including an individual fishing quota program.

(B) This subsection shall not be construed to prohibit a Council from submitting, or the Secretary from approving and implementing, amendments to the North Pacific halibut and sablefish, South

Atlantic wreckfish, or Mid-Atlantic surf clam and ocean (including mahogany) quahog individual fishing quota programs.

(3) An individual fishing quota or other limited access system authorization -

(A) shall be considered a permit for the purposes of sections 1857, 1858, and 1859 of this title;

(B) may be revoked or limited at any time in accordance with this chapter;

(C) shall not confer any right of compensation to the holder of such individual fishing quota or other such limited access system authorization if it is revoked or limited; and

(D) shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested.

(4)(A) A Council may submit, and the Secretary may approve and implement, a program which reserves up to 25 percent of any fees collected from a fishery under section 1854(d)(2) of this title to be used, pursuant to section 1274(a)(7) of title 46, Appendix, to issue obligations that aid in financing the -

(i) purchase of individual fishing quotas in that fishery by fishermen who fish from small vessels; and

(ii) first-time purchase of individual fishing quotas in that fishery by entry level fishermen.

(B) A Council making a submission under subparagraph (A) shall recommend criteria, consistent with the provisions of this chapter, that a fisherman must meet to qualify for guarantees under clauses (i) and (ii) of subparagraph (A) and the portion of funds to be allocated for guarantees under each clause.

(5) In submitting and approving any new individual fishing quota program on or after October 1, 2000, the Councils and the Secretary shall consider the report of the National Academy of Sciences required under section 108(f) of the Sustainable Fisheries Act, and any recommendations contained in such report, and shall ensure that any such program -

(A) establishes procedures and requirements for the review and revision of the terms of any such program (including any revisions that may be necessary once a national policy with respect to individual fishing quota programs is implemented), and, if appropriate, for the renewal, reallocation, or reissuance of individual fishing quotas;

(B) provides for the effective enforcement and management of any such program, including adequate observer coverage, and for fees under section 1854(d)(2) of this title to recover actual costs directly related to such enforcement and management; and

(C) provides for a fair and equitable initial allocation of individual fishing quotas, prevents any person from acquiring an

excessive share of the individual fishing quotas issued, and considers the allocation of a portion of the annual harvest in the fishery for entry-level fishermen, small vessel owners, and crew members who do not hold or qualify for individual fishing quotas.

(Pub. L. 94-265, title III, Sec. 303, Apr. 13, 1976, 90 Stat. 351; Pub. L. 95-354, Sec. 5(2), (3), Aug. 28, 1978, 92 Stat. 521; Pub. L. 97-453, Sec. 6, Jan. 12, 1983, 96 Stat. 2486; Pub. L. 99-659, title I, Sec. 101(c)(2), 105(a)(1), (b), Nov. 14, 1986, 100 Stat. 3707, 3711; Pub. L. 101-627, title I, Sec. 109, Nov. 28, 1990, 104 Stat. 4447; Pub. L. 102-251, title III, Sec. 301(g), Mar. 9, 1992, 106 Stat. 64; Pub. L. 104-297, title I, Sec. 108(a), (c)-(e), Oct. 11, 1996, 110 Stat. 3574-3576.)

AMENDMENT OF SUBSECTION (B)(1)(A)

Pub. L. 102-251, title III, Sec. 301(g), 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 (b)(1)(A) is amended by inserting "or special areas," after "exclusive economic zone" and "or areas" after "such zone".

REFERENCES IN TEXT

Section 108(f) of the Sustainable Fisheries Act, referred to in subsec. (d)(5), is section 108(f) of Pub. L. 104-297, which enacted provisions set out as a note below and repealed provisions formerly set out as a note under section 1851 of this title.

AMENDMENTS

1996 - Subsec. (a)(1)(A). Pub. L. 104-297, Sec. 108(a)(1), inserted "and rebuild overfished stocks" after "overfishing".

Subsec. (a)(5). Pub. L. 104-297, Sec. 108(a)(2), inserted "commercial, recreational, and charter fishing in" after "with respect to".

Subsec. (a)(7). Pub. L. 104-297, Sec. 108(a)(3), added par. (7) and struck out former par. (7) which read as follows: "include readily available information regarding the significance of habitat to the fishery and assessment as to the effects which changes to that habitat may have upon the fishery;"

Subsec. (a)(9)(A). Pub. L. 104-297, Sec. 108(a)(5), inserted "and fishing communities" after "fisheries".

Subsec. (a)(10) to (14). Pub. L. 104-297, Sec. 108(a)(4), (6), (7), added pars. (10) to (14).

Subsec. (b)(3). Pub. L. 104-297, Sec. 108(c)(1), added par. (3) and struck out former par. (3) which read as follows: "establish specified limitations on the catch of fish (based on area, species, size, number, weight, sex, incidental catch, total biomass, or other factors), which are necessary and appropriate for the conservation and management of the fishery;"

Subsec. (b)(6). Pub. L. 104-297, Sec. 108(c)(2), substituted "limited access system for" for "system for limiting access to" in introductory provisions.

Subsec. (b)(6)(E). Pub. L. 104-297, Sec. 108(c)(3), inserted "and any affected fishing communities" after "fishery".

Subsec. (b)(8). Pub. L. 104-297, Sec. 108(c)(4), substituted "require that one or more" for "require that".

Subsec. (b)(10) to (12). Pub. L. 104-297, Sec. 108(c)(5)-(7), added pars. (10) and (11) and redesignated former par. (10) as (12).

Subsec. (c). Pub. L. 104-297, Sec. 108(d), added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows: "The proposed regulations which the Council deems necessary or appropriate for purposes of carrying out a plan or amendment to a plan shall be submitted to the Secretary simultaneously with the plan or amendment for action by the Secretary under sections 1854 and 1855 of this title."

Subsecs. (d) to (f). Pub. L. 104-297, Sec. 108(e), added subsec. (d) and struck out former subsecs. (d) relating to confidentiality of statistics, (e) relating to data collection programs, and (f) relating to restriction on use of certain data.

1990 - Subsec. (a)(1)(A). Pub. L. 101-627, Sec. 109(a)(1), inserted before semicolon at end ", to prevent overfishing, and to protect, restore, and promote the long-term health and stability of the fishery".

Subsec. (a)(1)(C). Pub. L. 101-627, Sec. 109(a)(2), inserted "regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits)," after "this chapter,"

Subsec. (a)(6). Pub. L. 101-627, Sec. 109(a)(3), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "consider, and may provide for, temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safety of the vessels; and".

Subsec. (a)(8), (9). Pub. L. 101-627, Sec. 109(a)(4), (5), added

pars. (8) and (9).

Subsec. (b)(1). Pub. L. 101-627, Sec. 109(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "require a permit to be obtained from, and fees to be paid to, the Secretary with respect to any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone, or for anadromous species or Continental Shelf fishery resources beyond such zone;"

Subsec. (b)(7) to (10). Pub. L. 101-627, Sec. 109(b)(2), added pars. (7) and (8) and redesignated former pars. (7) and (8) as (9) and (10), respectively.

Subsec. (d). Pub. L. 101-627, Sec. 109(c), in introductory provisions substituted "subsections (a) and (b)" for "subsection (a)(5)", added par. (2), redesignated former par. (2) as (3), and inserted at end "Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any statistic submitted in compliance with a requirement under subsection (a) or (b) of this section."

Subsec. (f). Pub. L. 101-627, Sec. 109(d), added subsec. (f).

1986 - Subsec. (a)(6), (7). Pub. L. 99-659, Sec. 105(a)(1), added pars. (6) and (7).

Subsec. (b)(1). Pub. L. 99-659, Sec. 101(c)(2), substituted "exclusive economic zone" for "fishery conservation zone".

Subsec. (d). Pub. L. 99-659, Sec. 105(b), amended first sentence generally. Prior to amendment, first sentence read as follows: "Any statistics submitted to the Secretary by any person in compliance with any requirement under subsection (a)(5) of this section shall be confidential and shall not be disclosed except when required under court order."

1983 - Subsec. (b)(7), (8). Pub. L. 97-453, Sec. 6(1), added par. (7) and redesignated former par. (7) as (8).

Subsec. (c). Pub. L. 97-453, Sec. 6(2), substituted provision that the proposed regulation which the Council deems necessary or appropriate for purposes of carrying out a plan or amendment to a plan shall be submitted to the Secretary simultaneously with the plan or amendment for action by the Secretary under sections 1854 and 1855 of this title, for provision that any Council could prepare any proposed regulations which it deemed necessary and appropriate to carry out any fishery management plan, or any amendment to any fishery management plan, which was prepared by it, and that such proposed regulations would be submitted to the Secretary, together with such plan or amendment, for action by the Secretary pursuant to sections 1854 and 1855 of this title.

Subsec. (e). Pub. L. 97-453, Sec. 6(3), added subsec. (e).

1978 - Subsec. (a)(4)(C). Pub. L. 95-354, Sec. 5(2), added subpar. (C).

Subsec. (a)(5). Pub. L. 95-354, Sec. 5(3), inserted provisions relating to estimated processing capacity of, and the actual processing utilized by, United States fish processors.

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 1986 AMENDMENT

Section 105(a)(2) of Pub. L. 99-659 provided that: "The amendments made by paragraph (1) (amending this section) apply to each fishery management plan that -

"(A) is submitted to the Secretary of Commerce for review under section 304(a) of the Act (16 U.S.C. 1854(a)), or that is prepared by the Secretary, after January 1, 1987; or

"(B) is in effect on that date, but compliance with those amendments is not required except in conjunction with the amendment to the plan next occurring after that date."

IMPLEMENTATION OF AMENDMENTS TO PLANS REQUIRED BY SECTION 108(A) OF PUB. L. 104-297

Section 108(b) of Pub. L. 104-297 provided that: "Not later than 24 months after the date of enactment of this Act (Oct. 11, 1996), each Regional Fishery Management Council shall submit to the Secretary of Commerce amendments to each fishery management plan under its authority to comply with the amendments made in subsection (a) of this section (amending this section)."

INDIVIDUAL FISHING QUOTA REPORT

Section 108(f)(1) to (5) of Pub. L. 104-297, as amended by Pub. L. 104-208, div. A, title I, Sec. 101(a) (title II, Sec. 211(b)), Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that:

"(1) Not later than October 1, 1998, the National Academy of Sciences, in consultation with the Secretary of Commerce and the Regional Fishery Management Councils, shall submit to the Congress a comprehensive final report on individual fishing quotas, which shall include recommendations to implement a national policy with respect to individual fishing quotas. The report shall address all aspects of such quotas, including an analysis of -

"(A) the effects of limiting or prohibiting the transferability of such quotas;

"(B) mechanisms to prevent foreign control of the harvest of United States fisheries under individual fishing quota programs, including mechanisms to prohibit persons who are not eligible to

be deemed a citizen of the United States for the purpose of operating a vessel in the coastwise trade under section 2(a) and section 2(c) of the Shipping Act, 1916 (46 (App.) U.S.C. 802(a) and (c)) from holding individual fishing quotas;

"(C) the impact of limiting the duration of individual fishing quota programs;

"(D) the impact of authorizing Federal permits to process a quantity of fish that correspond to individual fishing quotas, and of the value created for recipients of any such permits, including a comparison of such value to the value of the corresponding individual fishing quotas;

"(E) mechanisms to provide for diversity and to minimize adverse social and economic impacts on fishing communities, other fisheries affected by the displacement of vessels, and any impacts associated with the shifting of capital value from fishing vessels to individual fishing quotas, as well as the use of capital construction funds to purchase individual fishing quotas;

"(F) mechanisms to provide for effective monitoring and enforcement, including the inspection of fish harvested and incentives to reduce bycatch, and in particular economic discards;

"(G) threshold criteria for determining whether a fishery may be considered for individual fishing quota management, including criteria related to the geographical range, population dynamics and condition of a fish stock, the socioeconomic characteristics of a fishery (including participants' involvement in multiple fisheries in the region), and participation by commercial, charter, and recreational fishing sectors in the fishery;

"(H) mechanisms to ensure that vessel owners, vessel masters, crew members, and United States fish processors are treated fairly and equitably in initial allocations, to require persons holding individual fishing quotas to be on board the vessel using such quotas, and to facilitate new entry under individual fishing quota programs;

"(I) potential social and economic costs and benefits to the nation, individual fishing quota recipients, and any recipients of Federal permits described in subparagraph (D) under individual fishing quota programs, including from capital gains revenue, the allocation of such quotas or permits through Federal auctions, annual fees and transfer fees at various levels, or other measures;

"(J) the value created for recipients of individual fishing quotas, including a comparison of such value to the value of the fish harvested under such quotas and to the value of permits created by other types of limited access systems, and the effects

of creating such value on fishery management and conservation;
and

"(K) such other matters as the National Academy of Sciences deems appropriate.

"(2) The report shall include a detailed analysis of individual fishing quota programs already implemented in the United States, including the impacts: of any limits on transferability, on past and present participants, on fishing communities, on the rate and total amount of bycatch (including economic and regulatory discards) in the fishery, on the safety of life and vessels in the fishery, on any excess harvesting or processing capacity in the fishery, on any gear conflicts in the fishery, on product quality from the fishery, on the effectiveness of enforcement in the fishery, on the size and composition of fishing vessel fleets, on the economic value created by individual fishing quotas for initial recipients and non-recipients, on conservation of the fishery resource, on fishermen who rely on participation in several fisheries, on the success in meeting any fishery management plan goals, and the fairness and effectiveness of the methods used for allocating quotas and controlling transferability. The report shall also include any information about individual fishing quota programs in other countries that may be useful.

"(3) The report shall identify and analyze alternative conservation and management measures, including other limited access systems such as individual transferable effort systems, that could accomplish the same objectives as individual fishing quota programs, as well as characteristics that are unique to individual fishing quota programs.

"(4) The Secretary of Commerce shall, in consultation with the National Academy of Sciences, the Councils, the fishing industry, affected States, conservation organizations and other interested persons, establish two individual fishing quota review groups to assist in the preparation of the report, which shall represent: (A) Alaska, Hawaii, and the other Pacific coastal States; and (B) Atlantic coastal States and the Gulf of Mexico coastal States. The Secretary shall, to the extent practicable, achieve a balanced representation of viewpoints among the individuals on each review group. The review groups shall be deemed to be advisory panels under section 302(g) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(g)), as amended by this Act.

"(5) The Secretary of Commerce, in consultation with the National Academy of Sciences and the Councils, shall conduct public hearings in each Council region to obtain comments on individual fishing quotas for use by the National Academy of Sciences in preparing the report required by this subsection. The National Academy of Sciences shall submit a draft report to the Secretary of

Commerce by January 1, 1998. The Secretary of Commerce shall publish in the Federal Register a notice and opportunity for public comment on the draft of the report, or any revision thereof. A detailed summary of comments received and views presented at the hearings, including any dissenting views, shall be included by the National Academy of Sciences in the final report."

EXISTING QUOTA PLANS

Section 108(i) of Pub. L. 104-297 provided that: "Nothing in this Act (see Short Title of 1996 Amendment note under section 1801 of this title) or the amendments made by this Act shall be construed to require a reallocation of individual fishing quotas under any individual fishing quota program approved by the Secretary before January 4, 1995."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 773c, 1821, 1852, 1854, 1855, 1862, 1881, 1883 of this title; title 46 App. section 1274.

16 USC Sec. 1854

01/26/98

TITLE 16 - CONSERVATION

SUBCHAPTER IV - NATIONAL FISHERY MANAGEMENT PROGRAM

Sec. 1854. Action by Secretary

(a) Review of plans

(1) Upon transmittal by the Council to the Secretary of a fishery management plan or plan amendment, the Secretary shall -

(A) immediately commence a review of the plan or amendment to determine whether it is consistent with the national standards, the other provisions of this chapter, and any other applicable law; and

(B) immediately publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

(2) In undertaking the review required under paragraph (1), the Secretary shall -

(A) take into account the information, views, and comments received from interested persons;

(B) consult with the Secretary of State with respect to foreign fishing; and

(C) consult with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea and to fishery access adjustments referred to in section 1853(a)(6)

of this title.

(3) The Secretary shall approve, disapprove, or partially approve a plan or amendment within 30 days of the end of the comment period under paragraph (1) by written notice to the Council. A notice of disapproval or partial approval shall specify -

(A) the applicable law with which the plan or amendment is inconsistent;

(B) the nature of such inconsistencies; and

(C) recommendations concerning the actions that could be taken by the Council to conform such plan or amendment to the requirements of applicable law.

If the Secretary does not notify a Council within 30 days of the end of the comment period of the approval, disapproval, or partial approval of a plan or amendment, then such plan or amendment shall take effect as if approved.

(4) If the Secretary disapproves or partially approves a plan or amendment, the Council may submit a revised plan or amendment to the Secretary for review under this subsection.

(5) For purposes of this subsection and subsection (b) of this section, the term "immediately" means on or before the 5th day after the day on which a Council transmits to the Secretary a fishery management plan, plan amendment, or proposed regulation that the Council characterizes as final.

(b) Review of regulations

(1) Upon transmittal by the Council to the Secretary of proposed regulations prepared under section 1853(c) of this title, the Secretary shall immediately initiate an evaluation of the proposed regulations to determine whether they are consistent with the fishery management plan, plan amendment, this chapter and other applicable law. Within 15 days of initiating such evaluation the Secretary shall make a determination and -

(A) if that determination is affirmative, the Secretary shall publish such regulations in the Federal Register, with such technical changes as may be necessary for clarity and an explanation of those changes, for a public comment period of 15 to 60 days; or

(B) if that determination is negative, the Secretary shall notify the Council in writing of the inconsistencies and provide recommendations on revisions that would make the proposed regulations consistent with the fishery management plan, plan amendment, this chapter, and other applicable law.

(2) Upon receiving a notification under paragraph (1)(B), the Council may revise the proposed regulations and submit them to the Secretary for reevaluation under paragraph (1).

(3) The Secretary shall promulgate final regulations within 30 days after the end of the comment period under paragraph (1)(A).

The Secretary shall consult with the Council before making any revisions to the proposed regulations, and must publish in the Federal Register an explanation of any differences between the proposed and final regulations.

(c) Preparation and review of Secretarial plans

(1) The Secretary may prepare a fishery management plan, with respect to any fishery, or any amendment to any such plan, in accordance with the national standards, the other provisions of this chapter, and any other applicable law, if -

(A) the appropriate Council fails to develop and submit to the Secretary, after a reasonable period of time, a fishery management plan for such fishery, or any necessary amendment to such a plan, if such fishery requires conservation and management;

(B) the Secretary disapproves or partially disapproves any such plan or amendment, or disapproves a revised plan or amendment, and the Council involved fails to submit a revised or further revised plan or amendment; or

(C) the Secretary is given authority to prepare such plan or amendment under this section.

(2) In preparing any plan or amendment under this subsection, the Secretary shall -

(A) conduct public hearings, at appropriate times and locations in the geographical areas concerned, so as to allow interested persons an opportunity to be heard in the preparation and amendment of the plan and any regulations implementing the plan; and

(B) consult with the Secretary of State with respect to foreign fishing and with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea.

(3) Notwithstanding paragraph (1) for a fishery under the authority of a Council, the Secretary may not include in any fishery management plan, or any amendment to any such plan, prepared by him, a provision establishing a limited access system, including any individual fishing quota program, unless such system is first approved by a majority of the voting members, present and voting, of each appropriate Council.

(4) Whenever the Secretary prepares a fishery management plan or plan amendment under this section, the Secretary shall immediately -

(A) for a plan or amendment for a fishery under the authority of a Council, submit such plan or amendment to the appropriate Council for consideration and comment; and

(B) publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment

may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

(5) Whenever a plan or amendment is submitted under paragraph (4)(A), the appropriate Council must submit its comments and recommendations, if any, regarding the plan or amendment to the Secretary before the close of the 60-day period referred to in paragraph (4)(B). After the close of such 60-day period, the Secretary, after taking into account any such comments and recommendations, as well as any views, information, or comments submitted under paragraph (4)(B), may adopt such plan or amendment.

(6) The Secretary may propose regulations in the Federal Register to implement any plan or amendment prepared by the Secretary. In the case of a plan or amendment to which paragraph (4)(A) applies, such regulations shall be submitted to the Council with such plan or amendment. The comment period on proposed regulations shall be 60 days, except that the Secretary may shorten the comment period on minor revisions to existing regulations.

(7) The Secretary shall promulgate final regulations within 30 days after the end of the comment period under paragraph (6). The Secretary must publish in the Federal Register an explanation of any substantive differences between the proposed and final rules. All final regulations must be consistent with the fishery management plan, with the national standards and other provisions of this chapter, and with any other applicable law.

(d) Establishment of fees

(1) The Secretary shall by regulation establish the level of any fees which are authorized to be charged pursuant to section 1853(b)(1) of this title. The Secretary may enter into a cooperative agreement with the States concerned under which the States administer the permit system and the agreement may provide that all or part of the fees collected under the system shall accrue to the States. The level of fees charged under this subsection shall not exceed the administrative costs incurred in issuing the permits.

(2)(A) Notwithstanding paragraph (1), the Secretary is authorized and shall collect a fee to recover the actual costs directly related to the management and enforcement of any -

- (i) individual fishing quota program; and
- (ii) community development quota program that allocates a percentage of the total allowable catch of a fishery to such program.

(B) Such fee shall not exceed 3 percent of the ex-vessel value of fish harvested under any such program, and shall be collected at either the time of the landing, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested.

(C)(i) Fees collected under this paragraph shall be in addition to any other fees charged under this chapter and shall be deposited in the Limited Access System Administration Fund established under section 1855(h)(5)(B) of this title, except that the portion of any such fees reserved under section 1853(d)(4)(A) of this title shall be deposited in the Treasury and available, subject to annual appropriations, to cover the costs of new direct loan obligations and new loan guarantee commitments as required by section 661c(b)(1) (FOOTNOTE 1) of title 2.

(FOOTNOTE 1) See References in Text note below.

(ii) Upon application by a State, the Secretary shall transfer to such State up to 33 percent of any fee collected pursuant to subparagraph (A) under a community development quota program and deposited in the Limited Access System Administration Fund in order to reimburse such State for actual costs directly incurred in the management and enforcement of such program.

(e) Rebuilding overfished fisheries

(1) The Secretary shall report annually to the Congress and the Councils on the status of fisheries within each Council's geographical area of authority and identify those fisheries that are overfished or are approaching a condition of being overfished. For those fisheries managed under a fishery management plan or international agreement, the status shall be determined using the criteria for overfishing specified in such plan or agreement. A fishery shall be classified as approaching a condition of being overfished if, based on trends in fishing effort, fishery resource size, and other appropriate factors, the Secretary estimates that the fishery will become overfished within two years.

(2) If the Secretary determines at any time that a fishery is overfished, the Secretary shall immediately notify the appropriate Council and request that action be taken to end overfishing in the fishery and to implement conservation and management measures to rebuild affected stocks of fish. The Secretary shall publish each notice under this paragraph in the Federal Register.

(3) Within one year of an identification under paragraph (1) or notification under paragraphs (2) or (7), the appropriate Council (or the Secretary, for fisheries under section 1852(a)(3) of this title) shall prepare a fishery management plan, plan amendment, or proposed regulations for the fishery to which the identification or notice applies -

(A) to end overfishing in the fishery and to rebuild affected stocks of fish; or

(B) to prevent overfishing from occurring in the fishery whenever such fishery is identified as approaching an overfished condition.

(4) For a fishery that is overfished, any fishery management

plan, amendment, or proposed regulations prepared pursuant to paragraph (3) or paragraph (5) for such fishery shall -

(A) specify a time period for ending overfishing and rebuilding the fishery that shall -

(i) be as short as possible, taking into account the status and biology of any overfished stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock of fish within the marine ecosystem; and

(ii) not exceed 10 years, except in cases where the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise;

(B) allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery; and

(C) for fisheries managed under an international agreement, reflect traditional participation in the fishery, relative to other nations, by fishermen of the United States.

(5) If, within the one-year period beginning on the date of identification or notification that a fishery is overfished, the Council does not submit to the Secretary a fishery management plan, plan amendment, or proposed regulations required by paragraph (3)(A), the Secretary shall prepare a fishery management plan or plan amendment and any accompanying regulations to stop overfishing and rebuild affected stocks of fish within 9 months under subsection (c) of this section.

(6) During the development of a fishery management plan, a plan amendment, or proposed regulations required by this subsection, the Council may request the Secretary to implement interim measures to reduce overfishing under section 1855(c) of this title until such measures can be replaced by such plan, amendment, or regulations. Such measures, if otherwise in compliance with the provisions of this chapter, may be implemented even though they are not sufficient by themselves to stop overfishing of a fishery.

(7) The Secretary shall review any fishery management plan, plan amendment, or regulations required by this subsection at routine intervals that may not exceed two years. If the Secretary finds as a result of the review that such plan, amendment, or regulations have not resulted in adequate progress toward ending overfishing and rebuilding affected fish stocks, the Secretary shall -

(A) in the case of a fishery to which section 1852(a)(3) of this title applies, immediately make revisions necessary to achieve adequate progress; or

(B) for all other fisheries, immediately notify the appropriate Council. Such notification shall recommend further conservation

and management measures which the Council should consider under paragraph (3) to achieve adequate progress.

(f) Fisheries under authority of more than one Council

(1) Except as provided in paragraph (3), (FOOTNOTE 1) if any fishery extends beyond the geographical area of authority of any one Council, the Secretary may -

(A) designate which Council shall prepare the fishery management plan for such fishery and any amendment to such plan; or

(B) may require that the plan and amendment be prepared jointly by the Councils concerned.

No jointly prepared plan or amendment may be submitted to the Secretary unless it is approved by a majority of the voting members, present and voting, of each Council concerned.

(2) The Secretary shall establish the boundaries between the geographical areas of authority of adjacent Councils.

(g) Atlantic highly migratory species

(1) Preparation and implementation of plan or plan amendment

The Secretary shall prepare a fishery management plan or plan amendment under subsection (c) of this section with respect to any highly migratory species fishery to which section 1852(a)(3) of this title applies. In preparing and implementing any such plan or amendment, the Secretary shall -

(A) consult with and consider the comments and views of affected Councils, commissioners and advisory groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species, and the advisory panel established under section 1852(g) of this title;

(B) establish an advisory panel under section 1852(g) of this title for each fishery management plan to be prepared under this paragraph;

(C) evaluate the likely effects, if any, of conservation and management measures on participants in the affected fisheries and minimize, to the extent practicable, any disadvantage to United States fishermen in relation to foreign competitors;

(D) with respect to a highly migratory species for which the United States is authorized to harvest an allocation, quota, or at a fishing mortality level under a relevant international fishery agreement, provide fishing vessels of the United States with a reasonable opportunity to harvest such allocation, quota, or at such fishing mortality level;

(E) review, on a continuing basis (and promptly whenever a recommendation pertaining to fishing for highly migratory species has been made under a relevant international fishery agreement), and revise as appropriate, the conservation and management measures included in the plan;

(F) diligently pursue, through international entities (such as the International Commission for the Conservation of Atlantic Tunas), comparable international fishery management measures with respect to fishing for highly migratory species; and

(G) ensure that conservation and management measures under this subsection -

(i) promote international conservation of the affected fishery;

(ii) take into consideration traditional fishing patterns of fishing vessels of the United States and the operating requirements of the fisheries;

(iii) are fair and equitable in allocating fishing privileges among United States fishermen and do not have economic allocation as the sole purpose; and

(iv) promote, to the extent practicable, implementation of scientific research programs that include the tagging and release of Atlantic highly migratory species.

(2) Certain fish excluded from "bycatch" definition

Notwithstanding section 1802(2) of this title, fish harvested in a commercial fishery managed by the Secretary under this subsection or the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971d) that are not regulatory discards and that are tagged and released alive under a scientific tagging and release program established by the Secretary shall not be considered bycatch for purposes of this chapter.

(h) Repeal or revocation of a fishery management plan

The Secretary may repeal or revoke a fishery management plan for a fishery under the authority of a Council only if the Council approves the repeal or revocation by a three-quarters majority of the voting members of the Council.

(Pub. L. 94-265, title III, Sec. 304, Apr. 13, 1976, 90 Stat. 352; Pub. L. 97-453, Sec. 7(a), Jan. 12, 1983, 96 Stat. 2487; Pub. L. 99-659, title I, Sec. 106, Nov. 14, 1986, 100 Stat. 3712; Pub. L. 101-627, title I, Sec. 110(a), (b)(1), (c), 111(a)(2), 120(d), Nov. 28, 1990, 104 Stat. 4449-4452, 4459; Pub. L. 102-567, title III, Sec. 303, Oct. 29, 1992, 106 Stat. 4283; Pub. L. 103-206, title VII, Sec. 702, Dec. 20, 1993, 107 Stat. 2446; Pub. L. 104-297, title I, Sec. 109(a)-(c), (e)-(g), (i), Oct. 11, 1996, 110 Stat. 3581-3585, 3587.)

REFERENCES IN TEXT

Section 661c(b)(1) of title 2, referred to in subsec. (d)(2)(C)(i), was in the original a reference to "section 504(b)(1) of the Federal Credit Reform Act (2 U.S.C. 661c(b)(1))"

and was translated as meaning section 504(b)(1) of the Federal Credit Reform Act of 1990, to reflect the probable intent of Congress.

Paragraph (3), referred to in subsec. (f)(1), was repealed by Pub. L. 104-297, title I, Sec. 109(f), Oct. 11, 1996, 110 Stat. 3585.

The Atlantic Tunas Convention Act of 1975, referred to in subsec. (g)(2), is Pub. L. 94-70, Aug. 5, 1975, 89 Stat. 385, as amended, which is classified generally to chapter 16A (Sec. 971 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 971 of this title and Tables.

AMENDMENTS

1996 - Subsecs. (a), (b). Pub. L. 104-297, Sec. 109(a), added subsecs. (a) and (b) and struck out former subsecs. (a) which related to actions by Secretary after receipt of a fishery management plan or amendment to a plan and (b) which related to implementation of approved plans and amendments and submission and review of revised plans and amendments.

Subsec. (c). Pub. L. 104-297, Sec. 109(b)(1), amended heading to read "Preparation and review of Secretarial plans".

Subsec. (c)(1). Pub. L. 104-297, Sec. 109(b)(2)-(4), struck out "or" at end of subpar. (A), substituted "or amendment; or" for "or amendment, as the case may be." in subpar. (B), added subpar. (C), and struck out concluding provisions which read as follows: "In preparing any such plan or amendment, the Secretary shall consult with the Secretary of State with respect to foreign fishing and with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea. The Secretary shall also prepare such proposed regulations as he deems necessary or appropriate to carry out each plan or amendment prepared by him under this paragraph."

Subsec. (c)(2). Pub. L. 104-297, Sec. 109(b)(5), added par. (2) and struck out former par. (2) which related to procedures for making fishery management plans and amendments available for review and comment.

Subsec. (c)(3). Pub. L. 104-297, Sec. 109(b)(6), (7), inserted "for a fishery under the authority of a Council" after "paragraph (1)" and substituted "system, including any individual fishing quota program" for "system described in section 1853(b)(6) of this title".

Subsec. (c)(4) to (7). Pub. L. 104-297, Sec. 109(b)(8), added pars. (4) to (7).

Subsec. (d). Pub. L. 104-297, Sec. 109(c), designated existing provisions as par. (1) and added par. (2).

Subsec. (e). Pub. L. 104-297, Sec. 109(e), amended heading and text of subsec. (e) generally. Prior to amendment, subsec. (e) required Secretary to initiate and maintain a comprehensive program of fishery research.

Subsec. (f)(3). Pub. L. 104-297, Sec. 109(f), struck out par. (3) which related to authority of Secretary over any highly migratory species fishery that is within the area of authority of more than one of certain Councils and to the preparation and amendment of fishery management plans with respect to such fishery.

Subsec. (g). Pub. L. 104-297, Sec. 109(g), added subsec. (g) and struck out former subsec. (g) which required the Secretary to establish a 3-year program to assess the impact on fishery resources of incidental harvest by the shrimp trawl fishery within the authority of the Gulf of Mexico Fishery Management Council and the South Atlantic Fishery Management Council.

Subsec. (h). Pub. L. 104-297, Sec. 109(i), added subsec. (h).

1993 - Subsec. (g)(6)(B). Pub. L. 103-206 substituted "April 1, 1994" for "January 1, 1994".

1992 - Subsec. (e)(1). Pub. L. 102-567 added par. (1). Former par. (1) redesignated (2).

Subsec. (e)(2). Pub. L. 102-567 redesignated par. (1) as (2) and substituted "(3)" for "(2)" in subpar. (A). Former par. (2) redesignated (3).

Subsec. (e)(3). Pub. L. 102-567 redesignated par. (2) as (3) and substituted "(2)" for "(1)" in introductory provisions. Former par. (3) redesignated (4).

Subsec. (e)(4). Pub. L. 102-567 redesignated par. (3) as (4) and substituted "(2)" for "(1)".

1990 - Subsec. (b)(1), (3)(D). Pub. L. 101-627, Sec. 111(a)(2)(A), (B), substituted "section 1855(a)" for "section 1855(c)".

Subsec. (c)(2)(B). Pub. L. 101-627, Sec. 120(d), substituted "appropriate Council" for "appropriate council".

Pub. L. 101-627, Sec. 111(a)(2)(C), substituted "section 1855(a)" for "section 1855(c)".

Subsec. (e). Pub. L. 101-627, Sec. 110(a), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "The Secretary shall initiate and maintain, in cooperation with the Councils, a comprehensive program of fishery research to carry out and further the purposes, policy, and provisions of this chapter. Such program shall be designed to acquire knowledge and information, including statistics, on fishery conservation and management and on the economics of the fisheries, including, but not limited to, biological research concerning the interdependence of fisheries or stocks of fish, the impact of pollution on fish, the impact of wetland and estuarine degradation, and other matters

bearing upon the abundance and availability of fish. The Secretary shall annually review and update the comprehensive program and make the results of the review and update available to the Councils."

Subsec. (f). Pub. L. 101-627, Sec. 110(b)(1), in heading substituted "Fisheries under authority of more than one Council" for "Miscellaneous duties", in par. (1) substituted "Except as provided in paragraph (3), if" for "If", and added par. (3).

Subsec. (g). Pub. L. 101-627, Sec. 110(c), added subsec. (g).

1986 - Subsec. (a)(1). Pub. L. 99-659, Sec. 106(1)(A), struck out "(the date of receipt of which is hereafter in this section referred to as the 'receipt date')" after "by a Council" in introductory provisions.

Subsec. (a)(1)(A), (B). Pub. L. 99-659, Sec. 106(1)(B), (C), added subpar. (A) and redesignated former subpars. (A) and (B) as (B) and (C), respectively.

Subsec. (a)(1)(C). Pub. L. 99-659, Sec. 106(1)(B), (D), redesignated former subpar. (B) as (C) and substituted "60-day" for "75-day". Former subpar. (C) redesignated (D).

Subsec. (a)(1)(D). Pub. L. 99-659, Sec. 106(1)(B), (E), redesignated former subpar. (C) as (D) and substituted "15th day" for "30th day".

Subsec. (a)(2). Pub. L. 99-659, Sec. 106(1)(F), substituted "paragraph (1)(B)" for "paragraph (1)(A)" in introductory provisions and inserted "and to fishery access adjustments referred to in section 1853(a)(6) of this title" in subpar. (C).

Subsec. (a)(3). Pub. L. 99-659, Sec. 106(1)(G), added par. (3).

Subsec. (b)(1)(A). Pub. L. 99-659, Sec. 106(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "the Secretary does not notify the Council in writing of his disapproval, or partial disapproval, under paragraph (2), of the plan or amendment before the close of the 95th day after the receipt date; or".

Subsec. (b)(1)(B). Pub. L. 99-659, Sec. 106(2)(B), substituted "60th day" for "75th day".

Subsec. (b)(2). Pub. L. 99-659, Sec. 106(2)(C), substituted "paragraph (1)(B)" for "paragraph (1)(A)" in introductory provisions.

Subsec. (b)(3)(A). Pub. L. 99-659, Sec. 106(2)(D)(i), inserted "disapproves a proposed plan or amendment under subsection (a)(1)(A)(ii) of this section, or".

Subsec. (b)(3)(B)(i), (C)(i). Pub. L. 99-659, Sec. 106(2)(D)(ii), substituted "subsection (a)(1)(B)" for "subsection (a)(1)(A)".

Subsec. (c)(2)(A)(ii). Pub. L. 99-659, Sec. 106(3)(A), substituted "60-day" for "75-day".

Subsec. (c)(2)(A)(iii). Pub. L. 99-659, Sec. 106(3)(B), substituted "15th day" for "30th day".

Subsec. (c)(2)(B). Pub. L. 99-659, Sec. 106(3)(C), substituted "60-day" for "75-day" in two places.

Subsec. (e). Pub. L. 99-659, Sec. 106(4), inserted ", in cooperation with the Councils," ", and on the economics of the fisheries", and "The Secretary shall annually review and update the comprehensive program and make the results of the review and update available to the Councils."

1983 - Subsec. (a). Pub. L. 97-453, Sec. 7(a)(1), amended subsec. (a) generally, which had provided that within 60 days after the Secretary received any fishery management plan, or any amendment to any such plan, which was prepared by any Council, the Secretary was to review such plan or amendment pursuant to subsection (b) of this section, notify such Council in writing of his approval, disapproval, or partial disapproval of such plan or amendment, and that in the case of disapproval or partial disapproval, the Secretary was to include in such notification a statement and explanation of the Secretary's objections and the reasons therefor, suggestions for improvement, a request to such Council to change such plan or amendment to satisfy the objections, and a request to resubmit the plan or amendment, as so modified, to the Secretary within 45 days after the date on which the Council received such notification.

Subsec. (b). Pub. L. 97-453, Sec. 7(a)(1), amended subsec. (b) generally, which had provided that the Secretary was to review any fishery management plan, and any amendment to any such plan, prepared by any Council and submitted to him to determine whether it was consistent with the national standards, the other provisions of this chapter, and any other applicable law, and that in carrying out such review, the Secretary was to consult with the Secretary of State with respect to foreign fishing, and the Secretary of the department in which the Coast Guard was operating with respect to enforcement at sea.

Subsec. (c)(1). Pub. L. 97-453, Sec. 7(a)(2)(A), in subpar. (B) substituted "or disapproves a revised plan or amendment, and the Council involved fails to submit a revised or further revised plan or amendment, as the case may be" for "and the Council involved fails to change such plan or amendment in accordance with the notification made under subsection (a)(2) of this section", and added to the provisions following subpar. (B) a requirement that the Secretary also prepare such proposed regulations as he deems necessary or appropriate to carry out each plan or amendment prepared by him under this paragraph.

Subsec. (c)(2). Pub. L. 97-453, Sec. 7(a)(2)(B), amended par. (2) generally, which had provided that whenever, pursuant to paragraph (1), the Secretary prepared a fishery management plan or amendment, the Secretary was to promptly transmit such plan or amendment to

the appropriate Council for consideration and comment, that within 45 days after the date of receipt of such plan or amendment, the appropriate Council could recommend, to the Secretary, changes in such plan or amendment, consistent with the national standards, the other provisions of this chapter, and any other applicable law, and that after the expiration of such 45-day period, the Secretary could implement such plan or amendment pursuant to section 1855 of this title.

Subsec. (d). Pub. L. 97-453, Sec. 7(a)(3), inserted provisions relating to agreements with the States for the administration of the permit system and the permissible accrual to the States of fees collected under the system.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 7(b) of Pub. L. 97-453 provided that: "The amendments made by subsection (a) (amending this section) shall only apply with respect to fishery management plans and amendments thereto that are initially submitted to the Secretary of Commerce on or after the date of the enactment of this Act (Jan. 12, 1983) for action under section 304 (this section)."

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES
Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. For treatment of references to Committee on Merchant Marine and Fisheries, see section 1(b)(3) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

DELAY OF COLLECTION OF FEES IN QUAHOG AND WRECKFISH FISHERIES

Section 109(d) of Pub. L. 104-297, as amended by Pub. L. 104-208, div. A, title I, Sec. 101(a) (title II, Sec. 211(b)), Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that: "Notwithstanding any other provision of law, the Secretary shall not begin the collection of fees under section 304(d)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1854(d)(2)), as amended by this Act, in the surf clam and ocean (including mahogany) quahog fishery or in the wreckfish fishery until after January 1, 2000."

COMPREHENSIVE MANAGEMENT SYSTEM FOR ATLANTIC PELAGIC LONGLINE FISHERY

Section 109(h) of Pub. L. 104-297, as amended by Pub. L. 104-208, div. A, title I, Sec. 101(a) (title II, Sec. 211(b)), Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that:

"(1) The Secretary of Commerce shall -

"(A) establish an advisory panel under section 302(g)(4) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(g)(4)), as amended by this Act, for pelagic longline

fishing vessels that participate in fisheries for Atlantic highly migratory species;

"(B) conduct surveys and workshops with affected fishery participants to provide information and identify options for future management programs;

"(C) to the extent practicable and necessary for the evaluation of options for a comprehensive management system, recover vessel production records; and

"(D) complete by January 1, 1998, a comprehensive study on the feasibility of implementing a comprehensive management system for pelagic longline fishing vessels that participate in fisheries for Atlantic highly migratory species, including, but not limited to, individual fishing quota programs and other limited access systems.

"(2) Based on the study under paragraph (1)(D) and consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), in cooperation with affected participants in the fishery, the United States Commissioners on the International Commission for the Conservation of Atlantic Tunas, and the advisory panel established under paragraph (1)(A), the Secretary of Commerce may, after October 1, 1998, implement a comprehensive management system pursuant to section 304 of such Act (16 U.S.C. 1854) for pelagic longline fishing vessels that participate in fisheries for Atlantic highly migratory species. Such a system may not implement an individual fishing quota program until after October 1, 2000."

INAPPLICABILITY OF SUBSECTION (H) TO AMERICAN LOBSTER FISHERY MANAGEMENT PLAN

Section 109(j) of Pub. L. 104-297, as amended by Pub. L. 104-208, div. A, title I, Sec. 101(a) (title II, Sec. 211(b)), Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that: "Section 304(h) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1854(h)), as amended by this Act, shall not apply to the American Lobster Fishery Management Plan."

INTERIM MANAGEMENT OF HIGHLY MIGRATORY SPECIES FISHERIES

Section 108(k) of Pub. L. 101-627, as amended by Pub. L. 104-208, div. A, title I, Sec. 101(a) (title II, Sec. 211(b)), Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that: "Notwithstanding the amendments made by subsections (a) and (g) (amending section 1852 of this title), any fishery management plan or amendment which -

"(1) addresses a highly migratory species fishery to which section 304(f)(3) of the Magnuson-Stevens Fishery Conservation and Management Act (former 16 U.S.C. 1854(f)(3)) (as amended by this Act) applies,

"(2) was prepared by one or more Regional Fishery Management Councils, and

"(3) was in force and effect on January 1, 1990, shall remain in force and effect until superseded by a fishery management plan prepared by the Secretary, and regulations implementing that plan."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1821, 1852, 1853, 1855, 1861a, 1862 of this title.

16 USC Sec. 1855

01/26/98

TITLE 16 - CONSERVATION

CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT

SUBCHAPTER IV - NATIONAL FISHERY MANAGEMENT PROGRAM

Sec. 1855. Other requirements and authority

(a) Gear evaluation and notification of entry

(1) Not later than 18 months after October 11, 1996, the Secretary shall publish in the Federal Register, after notice and an opportunity for public comment, a list of all fisheries -

(A) under the authority of each Council and all fishing gear used in such fisheries, based on information submitted by the Councils under section 1853(a) of this title; and

(B) to which section 1852(a)(3) of this title applies and all fishing gear used in such fisheries.

(2) The Secretary shall include with such list guidelines for determining when fishing gear or a fishery is sufficiently different from those listed as to require notification under paragraph (3).

(3) Effective 180 days after the publication of such list, no person or vessel may employ fishing gear or engage in a fishery not included on such list without giving 90 days advance written notice to the appropriate Council, or the Secretary with respect to a fishery to which section 1852(a)(3) of this title applies. A signed return receipt shall serve as adequate evidence of such notice and as the date upon which the 90-day period begins.

(4) A Council may submit to the Secretary any proposed changes to such list or such guidelines the Council deems appropriate. The Secretary shall publish a revised list, after notice and an opportunity for public comment, upon receiving any such proposed changes from a Council.

(5) A Council may request the Secretary to promulgate emergency regulations under subsection (c) of this section to prohibit any persons or vessels from using an unlisted fishing gear or engaging in an unlisted fishery if the appropriate Council, or the Secretary

for fisheries to which section 1852(a)(3) of this title applies, determines that such unlisted gear or unlisted fishery would compromise the effectiveness of conservation and management efforts under this chapter.

(6) Nothing in this subsection shall be construed to permit a person or vessel to engage in fishing or employ fishing gear when such fishing or gear is prohibited or restricted by regulation under a fishery management plan or plan amendment, or under other applicable law.

(b) Fish habitat

(1)(A) The Secretary shall, within 6 months of October 11, 1996, establish by regulation guidelines to assist the Councils in the description and identification of essential fish habitat in fishery management plans (including adverse impacts on such habitat) and in the consideration of actions to ensure the conservation and enhancement of such habitat. The Secretary shall set forth a schedule for the amendment of fishery management plans to include the identification of essential fish habitat and for the review and updating of such identifications based on new scientific evidence or other relevant information.

(B) The Secretary, in consultation with participants in the fishery, shall provide each Council with recommendations and information regarding each fishery under that Council's authority to assist it in the identification of essential fish habitat, the adverse impacts on that habitat, and the actions that should be considered to ensure the conservation and enhancement of that habitat.

(C) The Secretary shall review programs administered by the Department of Commerce and ensure that any relevant programs further the conservation and enhancement of essential fish habitat.

(D) The Secretary shall coordinate with and provide information to other Federal agencies to further the conservation and enhancement of essential fish habitat.

(2) Each Federal agency shall consult with the Secretary with respect to any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any essential fish habitat identified under this chapter.

(3) Each Council -

(A) may comment on and make recommendations to the Secretary and any Federal or State agency concerning any activity authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by any Federal or State agency that, in the view of the Council, may affect the habitat, including essential fish habitat, of a fishery resource under its authority; and

(B) shall comment on and make recommendations to the Secretary and any Federal or State agency concerning any such activity that, in the view of the Council, is likely to substantially affect the habitat, including essential fish habitat, of an anadromous fishery resource under its authority.

(4)(A) If the Secretary receives information from a Council or Federal or State agency or determines from other sources that an action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by any State or Federal agency would adversely affect any essential fish habitat identified under this chapter, the Secretary shall recommend to such agency measures that can be taken by such agency to conserve such habitat.

(B) Within 30 days after receiving a recommendation under subparagraph (A), a Federal agency shall provide a detailed response in writing to any Council commenting under paragraph (3) and the Secretary regarding the matter. The response shall include a description of measures proposed by the agency for avoiding, mitigating, or offsetting the impact of the activity on such habitat. In the case of a response that is inconsistent with the recommendations of the Secretary, the Federal agency shall explain its reasons for not following the recommendations.

(c) Emergency actions and interim measures

(1) If the Secretary finds that an emergency exists or that interim measures are needed to reduce overfishing for any fishery, he may promulgate emergency regulations or interim measures necessary to address the emergency or overfishing, without regard to whether a fishery management plan exists for such fishery.

(2) If a Council finds that an emergency exists or that interim measures are needed to reduce overfishing for any fishery within its jurisdiction, whether or not a fishery management plan exists for such fishery -

(A) the Secretary shall promulgate emergency regulations or interim measures under paragraph (1) to address the emergency or overfishing if the Council, by unanimous vote of the members who are voting members, requests the taking of such action; and

(B) the Secretary may promulgate emergency regulations or interim measures under paragraph (1) to address the emergency or overfishing if the Council, by less than a unanimous vote, requests the taking of such action.

(3) Any emergency regulation or interim measure which changes any existing fishery management plan or amendment shall be treated as an amendment to such plan for the period in which such regulation is in effect. Any emergency regulation or interim measure promulgated under this subsection -

(A) shall be published in the Federal Register together with the reasons therefor;

(B) shall, except as provided in subparagraph (C), remain in effect for not more than 180 days after the date of publication, and may be extended by publication in the Federal Register for one additional period of not more than 180 days, provided the public has had an opportunity to comment on the emergency regulation or interim measure, and, in the case of a Council recommendation for emergency regulations or interim measures, the Council is actively preparing a fishery management plan, plan amendment, or proposed regulations to address the emergency or overfishing on a permanent basis;

(C) that responds to a public health emergency or an oil spill may remain in effect until the circumstances that created the emergency no longer exist, Provided, That the public has an opportunity to comment after the regulation is published, and, in the case of a public health emergency, the Secretary of Health and Human Services concurs with the Secretary's action; and

(D) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination, except for emergency regulations promulgated under paragraph (2) in which case such early termination may be made only upon the agreement of the Secretary and the Council concerned.

(d) Responsibility of Secretary

The Secretary shall have general responsibility to carry out any fishery management plan or amendment approved or prepared by him, in accordance with the provisions of this chapter. The Secretary may promulgate such regulations, in accordance with section 553 of title 5, as may be necessary to discharge such responsibility or to carry out any other provision of this chapter.

(e) Effect of certain laws on certain time requirements

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), (FOOTNOTE 1) the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and Executive Order Numbered 12866, dated September 30, 1993, shall be complied with within the time limitations specified in subsections (a), (b), and (c) of section 1854 of this title as they apply to the functions of the Secretary under such provisions.

(FOOTNOTE 1) See References in Text note below.

(f) Judicial review

(1) Regulations promulgated by the Secretary under this chapter and actions described in paragraph (2) shall be subject to judicial review to the extent authorized by, and in accordance with, chapter 7 of title 5, if a petition for such review is filed within 30 days after the date on which the regulations are promulgated or the action is published in the Federal Register, as applicable; except that -

(A) section 705 of such title is not applicable, and

(B) the appropriate court shall only set aside any such

regulation or action on a ground specified in section 706(2)(A), (B), (C), or (D) of such title.

(2) The actions referred to in paragraph (1) are actions that are taken by the Secretary under regulations which implement a fishery management plan, including but not limited to actions that establish the date of closure of a fishery to commercial or recreational fishing.

(3)(A) Notwithstanding any other provision of law, the Secretary shall file a response to any petition filed in accordance with paragraph (1), not later than 45 days after the date the Secretary is served with that petition, except that the appropriate court may extend the period for filing such a response upon a showing by the Secretary of good cause for that extension.

(B) A response of the Secretary under this paragraph shall include a copy of the administrative record for the regulations that are the subject of the petition.

(4) Upon a motion by the person who files a petition under this subsection, the appropriate court shall assign the matter for hearing at the earliest possible date and shall expedite the matter in every possible way.

(g) Negotiated conservation and management measures

(1)(A) In accordance with regulations promulgated by the Secretary pursuant to this paragraph, a Council may establish a fishery negotiation panel to assist in the development of specific conservation and management measures for a fishery under its authority. The Secretary may establish a fishery negotiation panel to assist in the development of specific conservation and management measures required for a fishery under section 1854(e)(5) of this title, for a fishery for which the Secretary has authority under section 1854(g) of this title, or for any other fishery with the approval of the appropriate Council.

(B) No later than 180 days after October 11, 1996, the Secretary shall promulgate regulations establishing procedures, developed in cooperation with the Administrative Conference of the United States, for the establishment and operation of fishery negotiation panels. Such procedures shall be comparable to the procedures for negotiated rulemaking established by subchapter III of chapter 5 of title 5.

(2) If a negotiation panel submits a report, such report shall specify all the areas where consensus was reached by the panel, including, if appropriate, proposed conservation and management measures, as well as any other information submitted by members of the negotiation panel. Upon receipt, the Secretary shall publish such report in the Federal Register for public comment.

(3) Nothing in this subsection shall be construed to require either a Council or the Secretary, whichever is appropriate, to use

all or any portion of a report from a negotiation panel established under this subsection in the development of specific conservation and management measures for the fishery for which the panel was established.

(h) Central registry system for limited access system permits

(1) Within 6 months after October 11, 1996, the Secretary shall establish an exclusive central registry system (which may be administered on a regional basis) for limited access system permits established under section 1853(b)(6) of this title or other Federal law, including individual fishing quotas, which shall provide for the registration of title to, and interests in, such permits, as well as for procedures for changes in the registration of title to such permits upon the occurrence of involuntary transfers, judicial or nonjudicial foreclosure of interests, enforcement of judgments thereon, and related matters deemed appropriate by the Secretary. Such registry system shall -

(A) provide a mechanism for filing notice of a nonjudicial foreclosure or enforcement of a judgment by which the holder of a senior security interest acquires or conveys ownership of a permit, and in the event of a nonjudicial foreclosure, by which the interests of the holders of junior security interests are released when the permit is transferred;

(B) provide for public access to the information filed under such system, notwithstanding section 1881a(b) of this title; and

(C) provide such notice and other requirements of applicable law that the Secretary deems necessary for an effective registry system.

(2) The Secretary shall promulgate such regulations as may be necessary to carry out this subsection, after consulting with the Councils and providing an opportunity for public comment. The Secretary is authorized to contract with non-Federal entities to administer the central registry system.

(3) To be effective and perfected against any person except the transferor, its heirs and devisees, and persons having actual notice thereof, all security interests, and all sales and other transfers of permits described in paragraph (1), shall be registered in compliance with the regulations promulgated under paragraph (2). Such registration shall constitute the exclusive means of perfection of title to, and security interests in, such permits, except for Federal tax liens thereon, which shall be perfected exclusively in accordance with the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.). The Secretary shall notify both the buyer and seller of a permit if a lien has been filed by the Secretary of the Treasury against the permit before collecting any transfer fee under paragraph (5) of this subsection.

(4) The priority of security interests shall be determined in

order of filing, the first filed having the highest priority. A validly-filed security interest shall remain valid and perfected notwithstanding a change in residence or place of business of the owner of record. For the purposes of this subsection, "security interest" shall include security interests, assignments, liens and other encumbrances of whatever kind.

(5)(A) Notwithstanding section 1854(d)(1) of this title, the Secretary shall collect a reasonable fee of not more than one-half of one percent of the value of a limited access system permit upon registration of the title to such permit with the central registry system and upon the transfer of such registered title. Any such fee collected shall be deposited in the Limited Access System Administration Fund established under subparagraph (B).

(B) There is established in the Treasury a Limited Access System Administration Fund. The Fund shall be available, without appropriation or fiscal year limitation, only to the Secretary for the purposes of -

(i) administering the central registry system; and

(ii) administering and implementing this chapter in the fishery in which the fees were collected. Sums in the Fund that are not currently needed for these purposes shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(i) Alaska and western Pacific community development programs

(1)(A) The North Pacific Council and the Secretary shall establish a western Alaska community development quota program under which a percentage of the total allowable catch of any Bering Sea fishery is allocated to the program.

(B) To be eligible to participate in the western Alaska community development quota program under subparagraph (A) a community shall

(i) be located within 50 nautical miles from the baseline from which the breadth of the territorial sea is measured along the Bering Sea coast from the Bering Strait to the western most of the Aleutian Islands, or on an island within the Bering Sea;

(ii) not be located on the Gulf of Alaska coast of the north Pacific Ocean;

(iii) meet criteria developed by the Governor of Alaska, approved by the Secretary, and published in the Federal Register;

(iv) be certified by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) to be a Native village;

(v) consist of residents who conduct more than one-half of their current commercial or subsistence fishing effort in the waters of the Bering Sea or waters surrounding the Aleutian Islands; and

(vi) not have previously developed harvesting or processing

capability sufficient to support substantial participation in the groundfish fisheries in the Bering Sea, unless the community can show that the benefits from an approved Community Development Plan would be the only way for the community to realize a return from previous investments.

(C)(i) Prior to October 1, 2001, the North Pacific Council may not submit to the Secretary any fishery management plan, plan amendment, or regulation that allocates to the western Alaska community development quota program a percentage of the total allowable catch of any Bering Sea fishery for which, prior to October 1, 1995, the Council had not approved a percentage of the total allowable catch for allocation to such community development quota program. The expiration of any plan, amendment, or regulation that meets the requirements of clause (ii) prior to October 1, 2001, shall not be construed to prohibit the Council from submitting a revision or extension of such plan, amendment, or regulation to the Secretary if such revision or extension complies with the other requirements of this paragraph.

(ii) With respect to a fishery management plan, plan amendment, or regulation for a Bering Sea fishery that -

(I) allocates to the western Alaska community development quota program a percentage of the total allowable catch of such fishery; and

(II) was approved by the North Pacific Council prior to October 1, 1995;

the Secretary shall, except as provided in clause (iii) and after approval of such plan, amendment, or regulation under section 1854 of this title, allocate to the program the percentage of the total allowable catch described in such plan, amendment, or regulation. Prior to October 1, 2001, the percentage submitted by the Council and approved by the Secretary for any such plan, amendment, or regulation shall be no greater than the percentage approved by the Council for such fishery prior to October 1, 1995.

(iii) The Secretary shall phase in the percentage for community development quotas approved in 1995 by the North Pacific Council for the Bering Sea crab fisheries as follows:

(I) 3.5 percent of the total allowable catch of each such fishery for 1998 shall be allocated to the western Alaska community development quota program;

(II) 5 percent of the total allowable catch of each such fishery for 1999 shall be allocated to the western Alaska community development quota program; and

(III) 7.5 percent of the total allowable catch of each such fishery for 2000 and thereafter shall be allocated to the western Alaska community development quota program, unless the North Pacific Council submits and the Secretary approves a percentage

that is no greater than 7.5 percent of the total allowable catch of each such fishery for 2001 or the North Pacific Council submits and the Secretary approves any other percentage on or after October 1, 2001.

(D) This paragraph shall not be construed to require the North Pacific Council to resubmit, or the Secretary to reapprove, any fishery management plan or plan amendment approved by the North Pacific Council prior to October 1, 1995, that includes a community development quota program, or any regulations to implement such plan or amendment.

(2)(A) The Western Pacific Council and the Secretary may establish a western Pacific community development program for any fishery under the authority of such Council in order to provide access to such fishery for western Pacific communities that participate in the program.

(B) To be eligible to participate in the western Pacific community development program, a community shall -

(i) be located within the Western Pacific Regional Fishery Management Area;

(ii) meet criteria developed by the Western Pacific Council, approved by the Secretary and published in the Federal Register;

(iii) consist of community residents who are descended from the aboriginal people indigenous to the area who conducted commercial or subsistence fishing using traditional fishing practices in the waters of the Western (FOOTNOTE 2) Pacific region;

(FOOTNOTE 2) So in original. Probably should not be capitalized.

(iv) not have previously developed harvesting or processing capability sufficient to support substantial participation in fisheries in the Western Pacific Regional Fishery Management Area; and

(v) develop and submit a Community Development Plan to the Western Pacific Council and the Secretary.

(C) In developing the criteria for eligible communities under subparagraph (B)(ii), the Western Pacific Council shall base such criteria on traditional fishing practices in or dependence on the fishery, the cultural and social framework relevant to the fishery, and economic barriers to access to the fishery.

(D) For the purposes of this subsection "Western Pacific Regional Fishery Management Area" means the area under the jurisdiction of the Western Pacific Council, or an island within such area.

(E) Notwithstanding any other provision of this chapter, the Western Pacific Council shall take into account traditional indigenous fishing practices in preparing any fishery management plan.

(3) The Secretary shall deduct from any fees collected from a community development quota program under section 1854(d)(2) of this title the costs incurred by participants in the program for observer and reporting requirements which are in addition to observer and reporting requirements of other participants in the fishery in which the allocation to such program has been made.

(4) After October 11, 1996, the North Pacific Council and Western Pacific Council may not submit to the Secretary a community development quota program that is not in compliance with this subsection.

(Pub. L. 94-265, title III, Sec. 305, Apr. 13, 1976, 90 Stat. 354; Pub. L. 96-561, title II, Sec. 235, Dec. 22, 1980, 94 Stat. 3299; Pub. L. 97-453, Sec. 8, Jan. 12, 1983, 96 Stat. 2490; Pub. L. 101-627, title I, Sec. 110(b)(2), 111(a)(1), (b), Nov. 28, 1990, 104 Stat. 4451, 4452; Pub. L. 104-297, title I, Sec. 110(a)-(d), 111(a), Oct. 11, 1996, 110 Stat. 3587-3590, 3592.)

REFERENCES IN TEXT

is Pub. L. 96-511, Dec. 11, 1980, 94 Stat. 2812, as amended, which was classified principally to chapter 35 (Sec. 3501 et seq.) of Title 44, Public Printing and Documents, prior to the general amendment of that chapter by Pub. L. 104-13, Sec. 2, May 22, 1995, 109 Stat. 163. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 101 of Title 44 and Tables.

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.), referred to in subsec. (e), is Pub. L. 96-354, Sept. 19, 1980, 94 Stat. 1164, which is classified generally to chapter 6 (Sec. 601 et seq.) of Title 5, Government Organization and Employees. For complete classification of the Act to the Code, see Short Title note set out under section 601 of Title 5 and Tables.

Executive Order Numbered 12886, referred to in subsec. (e), is set out as a note under section 601 of Title 5, Government Organization and Employees.

The Internal Revenue Code of 1986, referred to in subsec. (h)(3), is classified generally to Title 26, Internal Revenue Code.

The Alaska Native Claims Settlement Act, referred to in subsec. (i)(1)(B)(iv), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (Sec. 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

AMENDMENTS

1996 - Pub. L. 104-297, Sec. 110(a)(1), (3), substituted "Other

requirements and authority" for "Implementation of fishery management plans" as section catchline.

Subsec. (a). Pub. L. 104-297, Sec. 110(a)(1), (3), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: "The Secretary shall promulgate each regulation that is necessary to carry out a plan or amendment -

"(1) within 110 days after the plan or amendment was received by him for action under section 1854(a) of this title, if such plan or amendment takes effect under section 1854(b)(1) of this title;

"(2) within 75 days after a revised plan or amendment was received by him under section 1854(b) of this title, if such plan or amendment takes effect under paragraph (3)(D) of such section; or

"(3) within such time as he deems appropriate in the case of a plan or amendment prepared by him under section 1854(c) or (f)(3) of this title."

Subsec. (b). Pub. L. 104-297, Sec. 110(a)(3), added subsec. (b). Former subsec. (b) redesignated (f).

Subsec. (c). Pub. L. 104-297, Sec. 110(b)(1), inserted "and interim measures" after "actions" in heading.

Subsec. (c)(1). Pub. L. 104-297, Sec. 110(b)(2)(C), which directed insertion of "or overfishing" after "emergency", was executed by making the insertion after "the emergency" to reflect the probable intent of Congress.

Pub. L. 104-297, Sec. 110(b)(2)(A), (B), substituted "or that interim measures are needed to reduce overfishing for" for "involving" and inserted "or interim measures" after "emergency regulations".

Subsec. (c)(2). Pub. L. 104-297, Sec. 110(b)(2)(C), which directed insertion of "or overfishing" after "emergency", was executed by making the insertion after "the emergency" in subpars. (A) and (B) to reflect the probable intent of Congress.

Pub. L. 104-297, Sec. 110(b)(2)(A), (B), substituted "or that interim measures are needed to reduce overfishing for" for "involving" in introductory provisions and inserted "or interim measures" after "emergency regulations" in subpars. (A) and (B).

Subsec. (c)(3). Pub. L. 104-297, Sec. 110(b)(3)(A), inserted "or interim measure" after "emergency regulation" in two places in introductory provisions.

Subsec. (c)(3)(B). Pub. L. 104-297, Sec. 110(b)(3)(B), (D), added subpar. (B) and struck out former subpar. (B) which read as follows: "shall remain in effect for not more than 90 days after the date of such publication, except that any such regulation may, by agreement of the Secretary and the Council, be promulgated for one additional period of not more than 90 days; and".

Subsec. (c)(3)(C). Pub. L. 104-297, Sec. 110(b)(3)(D), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (c)(3)(D). Pub. L. 104-297, Sec. 110(b)(3)(C), redesignated subpar. (C) as (D).

Subsec. (e). Pub. L. 104-297, Sec. 110(c), substituted "12866, dated September 30, 1993," for "12291, dated February 17, 1981," and "subsections (a), (b), and (c) of section 1854 of this title" for "subsection (c) of this section or section 1854(a) and (b) of this title".

Subsec. (f). Pub. L. 104-297, Sec. 110(a)(2), redesignated subsec. (b) as (f).

Subsecs. (g), (h). Pub. L. 104-297, Sec. 110(d), added subsecs. (g) and (h).

Subsec. (i). Pub. L. 104-297, Sec. 111(a), added subsec. (i).

1990 - Subsec. (a). Pub. L. 101-627, Sec. 110(b)(2), 111(a)(1)(A), redesignated subsec. (c) as (a) and substituted "section 1854(c) or (f)(3)" for "section 1854(c)".

Subsec. (b). Pub. L. 101-627, Sec. 111(a)(1)(A), (b), redesignated subsec. (d) as (b) and amended it generally. Prior to amendment, subsec. (b) read as follows: "Regulations promulgated by the Secretary under this chapter shall be subject to judicial review to the extent authorized by, and in accordance with, chapter 7 of title 5, if a petition for such review is filed within 30 days after the date on which the regulations are promulgated; except that (1) section 705 of such title is not applicable, and (2) the appropriate court shall only set aside any such regulation on a ground specified in section 706(2)(A), (B), (C), or (D) of such title."

Subsecs. (c) to (e), (g), (h). Pub. L. 101-627, Sec. 111(a)(1), redesignated subsecs. (e), (g), and (h) as (c), (d), and (e), respectively.

1983 - Subsec. (a). Pub. L. 97-453, Sec. 8(1), struck out subsec. (a) which had provided that, as soon as practicable after the Secretary approved pursuant to section 1854(a) and (b) of this title any fishery management plan or amendment or prepared pursuant to section 1854(c) of this title any fishery management plan or amendment, the Secretary was to publish a notice of availability of such plan or amendment and any regulations which he proposed to promulgate to implement such plan or amendment in the Federal Register, and that interested persons were to be afforded a period of not less than 45 days after such publication within which to submit in writing data, views, or comments on the plan or amendment, and on the proposed regulations.

Subsec. (b). Pub. L. 97-453, Sec. 8(1), struck out subsec. (b) which had provided that the Secretary might schedule a hearing, in accordance with section 553 of title 5, on any fishery management

plan, any amendment to any such plan, any regulations to implement any such plan or amendment and that if any such hearing was scheduled, the Secretary could postpone the effective date of the regulations proposed to implement such plan or amendment, or take such other action as he deemed appropriate to preserve the rights or status of any person, pending its outcome.

Subsec. (c). Pub. L. 97-453, Sec. 8(2), substituted provision that the Secretary shall promulgate each regulation that is necessary to carry out a plan or amendment within 110 days after the plan or amendment was received by him for action under section 1854(a) of this title if such plan or amendment takes effect under section 1854(b)(1) of this title, within 75 days after a revised plan or amendment was received by him under section 1854(b) of this title if such plan or amendment takes effect under paragraph (3)(D) of such section, or within such time as he deems appropriate in the case of a plan or amendment prepared by him under section 1854(c) of this title, for provision that the Secretary promulgate regulations to implement any fishery management plan or any amendment to any such plan after consideration of all relevant matters presented to him during the 45-day period referred to in former subsection (a) of this section and produced in any hearing held under former subsection (b) of this section if he found the plan or amendment consistent with the national standards, the other provisions of this chapter, and any other applicable law, and that to the extent practicable, such regulation be put into effect in a manner not disruptive of the regular fishing season for any fishery.

Subsec. (e). Pub. L. 97-453, Sec. 8(3), substituted provision that if the Secretary finds that an emergency exists involving any fishery, he may promulgate emergency regulations necessary to address the emergency, without regard to whether a fishery management plan exists for such fishery, that if a Council finds that an emergency exists involving any fishery within its jurisdiction, whether or not a fishery management plan exists for such fishery, the Secretary shall promulgate emergency regulations under paragraph (1) to address the emergency if the Council, by unanimous vote of the members who are voting members, requests the taking of such action, and the Secretary may promulgate emergency regulations under paragraph (1) to address the emergency if the Council, by less than a unanimous vote, requests the taking of such action, for provision that if the Secretary found that an emergency involving any fishery resources existed, he could promulgate emergency regulations, without regard to former subsections (a) and (c) of this section, to implement any fishery management plan, if required, or promulgate emergency regulations to amend any regulation implementing any existing fishery management plan, to

the extent required by such emergency, lengthened from 45 days to 90 days the maximum period that emergency regulations may remain in effect after publication in the Federal Register and the maximum additional period for which such regulations may be promulgated, and inserted a provision that emergency regulations promulgated under par. (2) may only be terminated early upon the agreement of the Secretary and the Council concerned.

Subsec. (f). Pub. L. 97-453, Sec. 8(4), struck out subsec. (f) which had directed the Secretary to report to the Congress and the President, not later than March 1 of each year, on all activities of the Councils and the Secretary with respect to fishery management plans, regulations to implement such plans, and all other activities relating to the conservation and management of fishery resources undertaken under this chapter during the preceding calendar year.

Subsec. (h). Pub. L. 97-453, Sec. 8(5), added subsec. (h).

1980 - Subsec. (a). Pub. L. 96-561 inserted "a notice of availability of" after "Federal Register (A)".

TERMINATION OF ADMINISTRATIVE CONFERENCE OF UNITED STATES

For termination of Administrative Conference of United States, see provision of title IV of Pub. L. 104-52, set out as a note preceding section 591 of Title 5, Government Organization and Employees.

COMMUNITY DEVELOPMENT QUOTA REPORT

Section 108(h) of Pub. L. 104-297 provided that: "Not later than October 1, 1998, the National Academy of Sciences, in consultation with the Secretary, the North Pacific and Western Pacific Councils, communities and organizations participating in the program, participants in affected fisheries, and the affected States, shall submit to the Secretary of Commerce and Congress a comprehensive report on the performance and effectiveness of the community development quota programs under the authority of the North Pacific and Western Pacific Councils. The report shall -

"(1) evaluate the extent to which such programs have met the objective of providing communities with the means to develop ongoing commercial fishing activities;

"(2) evaluate the manner and extent to which such programs have resulted in the communities and residents -

"(A) receiving employment opportunities in commercial fishing and processing; and

"(B) obtaining the capital necessary to invest in commercial fishing, fish processing, and commercial fishing support projects (including infrastructure to support commercial fishing);

"(3) evaluate the social and economic conditions in the participating communities and the extent to which alternative private sector employment opportunities exist;

"(4) evaluate the economic impacts on participants in the affected fisheries, taking into account the condition of the fishery resource, the market, and other relevant factors;

"(5) recommend a proposed schedule for accomplishing the developmental purposes of community development quotas; and

"(6) address such other matters as the National Academy of Sciences deems appropriate."

REGISTRY TRANSITION FOR LIMITED ACCESS SYSTEM PERMITS

Section 110(e) of Pub. L. 104-297, as amended by Pub. L. 104-208, div. A, title I, Sec. 101(a) (title II, Sec. 211(b)), Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that: "Security interests on permits described under section 305(h)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1855(h)(1)), as amended by this Act, that are effective and perfected by otherwise applicable law on the date of the final regulations implementing section 305(h) shall remain effective and perfected if, within 120 days after such date, the secured party submits evidence satisfactory to the Secretary of Commerce and in compliance with such regulations of the perfection of such security."

WESTERN PACIFIC DEMONSTRATION PROJECTS

Section 111(b) of Pub. L. 104-297, as amended by Pub. L. 104-208, div. A, title I, Sec. 101(a) (title II, Sec. 211(b)), Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that:

"(1) The Secretary of Commerce and the Secretary of the Interior are authorized to make direct grants to eligible western Pacific communities, as recommended by the Western Pacific Fishery Management Council, for the purpose of establishing not less than three and not more than five fishery demonstration projects to foster and promote traditional indigenous fishing practices. The total amount of grants awarded under this subsection shall not exceed \$500,000 in each fiscal year.

"(2) Demonstration projects funded pursuant to this subsection shall foster and promote the involvement of western Pacific communities in western Pacific fisheries and may -

"(A) identify and apply traditional indigenous fishing practices;

"(B) develop or enhance western Pacific community-based fishing opportunities; and

"(C) involve research, community education, or the acquisition of materials and equipment necessary to carry out any such demonstration project.

"(3)(A) The Western Pacific Fishery Management Council, in

consultation with the Secretary of Commerce, shall establish an advisory panel under section 302(g) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(g)) to evaluate, determine the relative merits of, and annually rank applications for such grants. The panel shall consist of not more than 8 individuals who are knowledgeable or experienced in traditional indigenous fishery practices of western Pacific communities and who are not members or employees of the Western Pacific Fishery Management Council.

"(B) If the Secretary of Commerce or the Secretary of the Interior awards a grant for a demonstration project not in accordance with the rank given to such project by the advisory panel, the Secretary shall provide a detailed written explanation of the reasons therefor.

"(4) The Western Pacific Fishery Management Council shall, with the assistance of such advisory panel, submit an annual report to the Congress assessing the status and progress of demonstration projects carried out under this subsection.

"(5) Appropriate Federal agencies may provide technical assistance to western Pacific community-based entities to assist in carrying out demonstration projects under this subsection.

"(6) For the purposes of this subsection, 'western Pacific community' shall mean a community eligible to participate under section 305(i)(2)(B) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1855(i)(2)(B)), as amended by this Act."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1802, 1821, 1852, 1853, 1854, 5503 of this title.

16 USC Sec. 1856

01/26/98

TITLE 16 - CONSERVATION CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT SUBCHAPTER IV - NATIONAL FISHERY MANAGEMENT PROGRAM

Sec. 1856. State jurisdiction

(a) In general

(1) Except as provided in subsection (b) of this section, nothing in this chapter shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries.

(2) For the purposes of this chapter, except as provided in subsection (b) of this section, the jurisdiction and authority of a

State shall extend -

(A) to any pocket of waters that is adjacent to the State and totally enclosed by lines delimiting the territorial sea of the United States pursuant to the Geneva Convention on the Territorial Sea and Contiguous Zone or any successor convention to which the United States is a party;

(B) with respect to the body of water commonly known as Nantucket Sound, to the pocket of water west of the seventieth meridian west of Greenwich; and

(C) to the waters of southeastern Alaska (for the purpose of regulating fishing for other than any species of crab) that are -

(i) north of the line representing the international boundary at Dixon Entrance and the westward extension of that line; east of 138 degrees west longitude; and not more than three nautical miles seaward from the coast, from the lines extending from headland to headland across all bays, inlets, straits, passes, sounds, and entrances, and from any island or group of islands, including the islands of the Alexander Archipelago (except Forrester Island); or

(ii) between the islands referred to in clause (i) (except Forrester Island) and the mainland.

(3) A State may regulate a fishing vessel outside the boundaries of the State in the following circumstances:

(A) The fishing vessel is registered under the law of that State, and (i) there is no fishery management plan or other applicable Federal fishing regulations for the fishery in which the vessel is operating; or (ii) the State's laws and regulations are consistent with the fishery management plan and applicable Federal fishing regulations for the fishery in which the vessel is operating.

(B) The fishery management plan for the fishery in which the fishing vessel is operating delegates management of the fishery to a State and the State's laws and regulations are consistent with such fishery management plan. If at any time the Secretary determines that a State law or regulation applicable to a fishing vessel under this circumstance is not consistent with the fishery management plan, the Secretary shall promptly notify the State and the appropriate Council of such determination and provide an opportunity for the State to correct any inconsistencies identified in the notification. If, after notice and opportunity for corrective action, the State does not correct the inconsistencies identified by the Secretary, the authority granted to the State under this subparagraph shall not apply until the Secretary and the appropriate Council find that the State has corrected the inconsistencies. For a fishery for which there was a fishery management plan in place on August 1, 1996

that did not delegate management of the fishery to a State as of that date, the authority provided by this subparagraph applies only if the Council approves the delegation of management of the fishery to the State by a three-quarters majority vote of the voting members of the Council.

(C) The fishing vessel is not registered under the law of the State of Alaska and is operating in a fishery in the exclusive economic zone off Alaska for which there was no fishery management plan in place on August 1, 1996, and the Secretary and the North Pacific Council find that there is a legitimate interest of the State of Alaska in the conservation and management of such fishery. The authority provided under this subparagraph shall terminate when a fishery management plan under this chapter is approved and implemented for such fishery.

(b) Exception

(1) If the Secretary finds, after notice and an opportunity for a hearing in accordance with section 554 of title 5, that -

(A) the fishing in a fishery, which is covered by a fishery management plan implemented under this chapter, is engaged in predominately within the exclusive economic zone and beyond such zone; and

(B) any State has taken any action, or omitted to take any action, the results of which will substantially and adversely affect the carrying out of such fishery management plan; the Secretary shall promptly notify such State and the appropriate Council of such finding and of his intention to regulate the applicable fishery within the boundaries of such State (other than its internal waters), pursuant to such fishery management plan and the regulations promulgated to implement such plan.

(2) If the Secretary, pursuant to this subsection, assumes responsibility for the regulation of any fishery, the State involved may at any time thereafter apply to the Secretary for reinstatement of its authority over such fishery. If the Secretary finds that the reasons for which he assumed such regulation no longer prevail, he shall promptly terminate such regulation.

(3) If the State involved requests that a hearing be held pursuant to paragraph (1), the Secretary shall conduct such hearing prior to taking any action under paragraph (1).

(c) Exception regarding foreign fish processing in internal waters

(1) A foreign fishing vessel may engage in fish processing within the internal waters of a State if, and only if -

(A) the vessel is qualified for purposes of this paragraph pursuant to paragraph (4)(C) or has received a permit under section 1824(d) of this title;

(B) the owner or operator of the vessel applies to the Governor of the State for, and (subject to paragraph (2)) is granted,

permission for the vessel to engage in such processing and the application specifies the species to be processed; and

(C) the owner or operator of the vessel submits reports on the tonnage of fish received from vessels of the United States and the locations from which such fish were harvested, in accordance with such procedures as the Secretary by regulation shall prescribe.

(2) The Governor of a State may not grant permission for a foreign fishing vessel to engage in fish processing under paragraph (1) -

(A) for a fishery which occurs in the waters of more than one State or in the exclusive economic zone, except after -

(i) consulting with the appropriate Council and Marine Fisheries Commission, and

(ii) considering any comments received from the Governor of any other State where the fishery occurs; and

(B) if the Governor determines that fish processors within the State have adequate capacity, and will utilize such capacity, to process all of the United States harvested fish from the fishery concerned that are landed in the State.

(3) Nothing in this subsection may be construed as relieving a foreign fishing vessel from the duty to comply with all applicable Federal and State laws while operating within the internal waters of a State incident to permission obtained under paragraph (1)(B).

(4) For purposes of this subsection -

(A) The term "fish processing" includes, in addition to processing, the performance of any other activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, or transportation.

(B) The phrase "internal waters of a State" means all waters within the boundaries of a State except those seaward of the baseline from which the territorial sea is measured.

(C) A foreign fishing vessel shall be treated as qualified for purposes of paragraph (1) if the foreign nation under which it is flagged will be a party to (i) a governing international fishery agreement or (ii) a treaty described in section 1821(b) of this title during the time the vessel will engage in the fish processing for which permission is sought under paragraph (1)(B).

(Pub. L. 94-265, title III, Sec. 306, Apr. 13, 1976, 90 Stat. 355; Pub. L. 97-191, Sec. 1, June 1, 1982, 96 Stat. 107; Pub. L. 97-453, Sec. 9, Jan. 12, 1983, 96 Stat. 2491; Pub. L. 98-623, title IV, Sec. 404(4), Nov. 8, 1984, 98 Stat. 3408; Pub. L. 99-659, title I, Sec. 101(c)(2), Nov. 14, 1986, 100 Stat. 3707; Pub. L. 101-627, title I, Sec. 112, Nov. 28, 1990, 104 Stat. 4453; Pub. L. 104-297, title I, Sec. 112(a)-(c), Oct. 11, 1996, 110 Stat. 3595, 3596.)

AMENDMENTS

1996 - Subsec. (a)(3). Pub. L. 104-297, Sec. 112(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "Except as otherwise provided by paragraph (2), a State may not directly or indirectly regulate any fishing vessel outside its boundaries, unless the vessel is registered under the law of that State."

Subsec. (b)(3). Pub. L. 104-297, Sec. 112(b), added par. (3).

Subsec. (c)(1)(A). Pub. L. 104-297, Sec. 112(c)(1), substituted "(4)(C) or has received a permit under section 1824(d) of this title;" for "(4)(C); and".

Subsec. (c)(1)(C). Pub. L. 104-297, Sec. 112(c)(2), (3), added subpar. (C).

1990 - Subsec. (c)(1)(B). Pub. L. 101-627, Sec. 112(1), inserted before period at end "and the application specifies the species to be processed".

Subsec. (c)(2). Pub. L. 101-627, Sec. 112(2), added par. (2) and struck out former par. (2) which read as follows: "The Governor of a State may not grant permission for a foreign fishing vessel to engage in fish processing under paragraph (1)(B) if he determines that fish processors within the State have adequate capacity, and will utilize such capacity, to process all of the United States harvested fish from the fishery concerned that are landed in the State."

1986 - Subsec. (b)(1)(A). Pub. L. 99-659 substituted "exclusive economic zone" for "fishery conservation zone".

1984 - Subsec. (a). Pub. L. 98-623 designated existing provisions as pars. (1) to (3), in par. (2), as so designated, redesignated cls. (1) and (2) as subpars. (A) and (B), respectively, and added subpar. (C), and in par. (3), as so designated, inserted exception relating to par. (2).

1983 - Subsec. (a). Pub. L. 97-453 inserted provision delineating the jurisdiction and authority of a State over waters adjacent to the State and over Nantucket Sound.

1982 - Subsec. (c). Pub. L. 97-191 added subsec. (c).

EFFECTIVE DATE OF 1982 AMENDMENT

Section 3 of Pub. L. 97-191 provided that: "This Act (amending this section and section 1857 of this title) shall take effect on June 1, 1982."

INTERIM AUTHORITY FOR DUNGENESS CRAB

Section 112(d) of Pub. L. 104-297, as amended by Pub. L. 104-208, div. A, title I, Sec. 101(a) (title II, Sec. 211(b)), Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that:

"(1) Subject to the provisions of this subsection and notwithstanding section 306(a) of the Magnuson-Stevens Fishery

Conservation and Management Act (16 U.S.C. 1856(a)), the States of Washington, Oregon, and California may each enforce State laws and regulations governing fish harvesting and processing against any vessel operating in the exclusive economic zone off each respective State in a fishery for Dungeness crab (*Cancer magister*) for which there is no fishery management plan implemented under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

"(2) Any law or regulation promulgated under this subsection shall apply equally to vessels operating in the exclusive economic zone and adjacent State waters and shall be limited to -

"(A) establishment of season opening and closing dates, including presoak dates for crab pots;

"(B) setting of minimum sizes and crab meat recovery rates;

"(C) restrictions on the retention of crab of a certain sex; and

"(D) closure of areas or pot limitations to meet the harvest requirements arising under the jurisdiction of *United States v. Washington*, subproceeding 89-3.

"(3) With respect to the States of Washington, Oregon, and California -

"(A) any State law limiting entry to a fishery subject to regulation under this subsection may not be enforced against a vessel that is operating in the exclusive economic zone off that State and is not registered under the law of that State, if the vessel is otherwise legally fishing in the exclusive economic zone, except that State laws regulating landings may be enforced; and

"(B) no vessel may harvest or process fish which is subject to regulation under this subsection unless under an appropriate State permit or pursuant to a Federal court order.

"(4) The authority provided under this subsection to regulate the Dungeness crab fishery shall terminate on October 1, 1999, or when a fishery management plan is implemented under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) for such fishery, whichever date is earlier.

"(5) Nothing in this subsection shall reduce the authority of any State, as such authority existed on July 1, 1996, to regulate fishing, fish processing, or landing of fish.

"(6)(A) It is the sense of Congress that the Pacific Fishery Management Council, at the earliest practicable date, should develop and submit to the Secretary fishery management plans for shellfish fisheries conducted in the geographic area of authority of the Council, especially Dungeness crab, which are not subject to a fishery management plan on the date of enactment of this Act (Oct. 11, 1996).

"(B) Not later than December 1, 1997, the Pacific Fishery Management Council shall provide a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives describing the progress in developing the fishery management plans referred to in subparagraph (A) and any impediments to such progress."

FOREIGN FISH PROCESSING IN NORTON SOUND

Pub. L. 99-509, title V, Sec. 5004, Oct. 21, 1986, 100 Stat. 1912, provided that for purposes of processing pink salmon within the internal waters of the State of Alaska, the geographic area bounded on the north by a parallel of latitude of 64 degrees, 23 minutes, on the south by a parallel of latitude of 63 degrees, 51 minutes, on the east by the baseline from which the territorial sea was measured, and on the west by the outer limit of the territorial sea, was to be considered to be internal waters of the State of Alaska for the purposes of subsec. (c)(4)(B) of this section until Sept. 30, 1993.

TERRITORIAL SEA OF UNITED STATES

For extension of territorial sea of United States, see Proc. No. Lands.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1857 of this title.

16 USC Sec. 1857

01/26/98

TITLE 16 - CONSERVATION

CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT

SUBCHAPTER IV - NATIONAL FISHERY MANAGEMENT PROGRAM

Sec. 1857. Prohibited acts

It is unlawful -

(1) for any person -

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

(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 chapter;

(C) to violate any provision of, or regulation under, an applicable governing international fishery agreement entered into pursuant to section 1821(c) of this title;

(D) to refuse to permit any officer authorized to enforce the provisions of this chapter (as provided for in section 1861 of this title) 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 chapter 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 chapter 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 chapter;

(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 subchapter, 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 (FOOTNOTE 1) steal or attempt to steal or to negligently and without authorization remove, damage, or tamper

with -

(FOOTNOTE 1) So in original.

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

(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 chapter, or any data collector employed by the National Marine Fisheries Service or under contract to any person to carry out responsibilities under this chapter;

(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; or

(O) to knowingly and willfully fail to disclose, or to falsely disclose, any financial interest as required under section 1852(j) of this title, or to knowingly vote on a Council decision in violation of section 1852(j)(7)(A) of this title.

(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 1821(i) of this title;

(ii) fish processing permitted under section 1856(c) of this title; or

(iii) transshipment at sea of fish or fish products within the boundaries of any State in accordance with a permit approved under section 1824(d) of this title;

(B) in fishing, except recreational fishing permitted under section 1821(i) of this title, 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 1824(b), (c), or (d) of this title; or

(C) except as permitted under section 1856(c) of this title, 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 1824(d) of this title or section 1856(c) of this title 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 1823 of this title, 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.

(Pub. L. 94-265, title III, Sec. 307, Apr. 13, 1976, 90 Stat. 355; Pub. L. 95-354, Sec. 5(4), Aug. 28, 1978, 92 Stat. 521; Pub. L. 97-191, Sec. 2, June 1, 1982, 96 Stat. 107; Pub. L. 97-453, Sec. 15(b), Jan. 12, 1983, 96 Stat. 2492; Pub. L. 99-659, title I, Sec. 101(c)(2), 107(a), Nov. 14, 1986, 100 Stat. 3707, 3713; Pub. L. 100-629, Sec. 4, Nov. 7, 1988, 102 Stat. 3286; Pub. L. 101-224, Sec. 8, Dec. 12, 1989, 103 Stat. 1907; Pub. L. 101-627, title I, Sec. 113, Nov. 28, 1990, 104 Stat. 4453; Pub. L. 102-251, title III, Sec. 301(h), Mar. 9, 1992, 106 Stat. 64; Pub. L. 104-297, title I, Sec. 113, title IV, Sec. 405(b)(1), Oct. 11, 1996, 110 Stat. 3597, 3621.)

AMENDMENT OF SECTION

Pub. L. 102-251, title III, Sec. 301(h), 308, Mar. 9, 1992, 106 Stat. 64, 66, as amended by Pub. L. 104-297, title IV, Sec. 405(b)(1), Oct. 11, 1996, 110 Stat. 3621, 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, this section is amended:

(1) in paragraph (1)(K), by inserting "or special areas" immediately after "exclusive economic zone";

(2) in paragraph (2)(B), by inserting "or areas" immediately after "such zone";

(3) in paragraph (3), by inserting "or special areas" immediately after "exclusive economic zone"; and

(4) in paragraph (4), by inserting "or special areas" immediately after "exclusive economic zone".

REFERENCES IN TEXT

The Atlantic Coastal Fisheries Cooperative Management Act, referred to in par. (1)(J)(i), is title VIII of Pub. L. 103-206, Dec. 20, 1993, 107 Stat. 2447, as amended, which is classified principally to chapter 71 (Sec. 5101 et seq.) of this title. For complete classification of title VIII to the Code, see Short Title note set out under section 5101 of this title and Tables.

AMENDMENTS

1996 - Par. (1)(J)(i). Pub. L. 104-297, Sec. 113(a), substituted "plan implemented" for "plan, implemented" and inserted before semicolon at end ", 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.)".

Par. (1)(K). Pub. L. 104-297, Sec. 113(b)(2), substituted "gear;" for "gear," at end of cl. (ii) and struck out concluding provisions which read as follows: "or to attempt to do so;".

Pub. L. 104-297, Sec. 113(b)(1), which directed substitution of "to steal or attempt to steal or to negligently and without authorization" for "knowingly steal or without authorization, to", was executed by making the substitution for "knowingly steal, or without authorization, to" to reflect the probable intent of Congress.

Par. (1)(L). Pub. L. 104-297, Sec. 113(c), amended subpar. (L) generally. Prior to amendment, subpar. (L) read as follows: "to forcibly assault, resist, oppose, impede, intimidate, or interfere

with any observer on a vessel under this chapter;"

Par. (1)(O). Pub. L. 104-297, Sec. 113(d), added subpar. (O).

Par. (2)(A). Pub. L. 104-297, Sec. 113(e), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "in fishing within the boundaries of any State, except recreational fishing permitted under section 1821(j) of this title;"

Par. (2)(B). Pub. L. 104-297, Sec. 113(f), substituted "1821(i)" for "1821(j)" and "1824(b), (c), or (d)" for "1824(b) or (c)".

Par. (3). Pub. L. 104-297, Sec. 113(g), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "for any vessel of the United States, and for the owner or operator of any vessel of the United States, to transfer directly or indirectly, or attempt to so transfer, any United States harvested fish to any foreign fishing vessel, while such foreign vessel is within the exclusive economic zone, unless the foreign fishing vessel has been issued a permit under section 1824 of this title which authorizes the receipt by such vessel of United States harvested fish of the species concerned;"

Par. (4). Pub. L. 104-297, Sec. 113(h), inserted "or within the boundaries of any State" after "zone" in introductory provisions.

1990 - Par. (1)(K) to (N). Pub. L. 101-627, Sec. 113(a), added subpars. (K) to (N).

Par. (5). Pub. L. 101-627, Sec. 113(b), added par. (5).

1989 - Par. (1)(J). Pub. L. 101-224 added subpar. (J).

1988 - Par. (4). Pub. L. 100-629 added par. (4).

1986 - Par. (1)(I). Pub. L. 99-659, Sec. 107(a), added subpar. (I).

Pars. (2)(B), (3). Pub. L. 99-659, Sec. 101(c)(2), substituted "exclusive economic zone" for "fishery conservation zone".

1983 - Par. (2)(A). Pub. L. 97-453, Sec. 15(b)(A), substituted "in fishing within the boundaries of any State, except recreational fishing permitted under section 1821(j) of this title" for "in fishing within the boundaries of any State".

Par. (2)(B). Pub. L. 97-453, Sec. 15(b)(B), inserted ", except recreational fishing permitted under section 1821(j) of this title," after "in fishing".

1982 - Par. (2). Pub. L. 97-191, Sec. 2(1), struck out "in fishing" in provisions preceding subpar. (A).

Par. (2)(A). Pub. L. 97-191, Sec. 2(2), inserted "in fishing" at beginning and struck out "or" at end.

Par. (2)(B). Pub. L. 97-191, Sec. 2(3), inserted "in fishing" at beginning and substituted "or" for "and" at end.

Par. (2)(C). Pub. L. 97-191, Sec. 2(4), added subpar. (C).

1978 - Par. (3). Pub. L. 95-354 added par. (3).

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 1982 AMENDMENT

Amendment by Pub. L. 97-191 effective June 1, 1982, see section 3 of Pub. L. 97-191, set out as a note under section 1856 of this title.

EFFECTIVE DATE

Section 312 of Pub. L. 94-265, provided that this section and sections 1858 to 1861 of this title were to take effect Mar. 1, 1977, prior to the general amendment of section 312 by Pub. L. 104-297, title I, Sec. 116(a), Oct. 11, 1996, 110 Stat. 3600. See section 1861a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 971e, 1821, 1827, 1852, 1853, 1858, 1859, 1860, 1861, 3606, 5103 of this title.

16 USC Sec. 1858

01/26/98

TITLE 16 - CONSERVATION

CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT

SUBCHAPTER IV - NATIONAL FISHERY MANAGEMENT PROGRAM

Sec. 1858. Civil penalties and permit sanctions

(a) Assessment of penalty

Any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, to have committed an act prohibited by section 1857 of this title shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed \$100,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require. In assessing such penalty

the Secretary may also consider any information provided by the violator relating to the ability of the violator to pay, Provided, That the information is served on the Secretary at least 30 days prior to an administrative hearing.

(b) Review of civil penalty

Any person against whom a civil penalty is assessed under subsection (a) of this section or against whom a permit sanction is imposed under subsection (g) of this section (other than a permit suspension for nonpayment of penalty or fine) may obtain review thereof in the United States district court for the appropriate district by filing a complaint against the Secretary in such court within 30 days from the date of such order. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28. The findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5.

(c) Action upon failure to pay assessment

If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(d) In rem jurisdiction

A fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used in the commission of an act prohibited by section 1857 of this title shall be liable in rem for any civil penalty assessed for such violation under this section and may be proceeded against in any district court of the United States having jurisdiction thereof. Such penalty shall constitute a maritime lien on such vessel which may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.

(e) Compromise or other action by Secretary

The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

(f) Subpenas

For the purposes of conducting any hearing under this section, the Secretary may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be

paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(g) Permit sanctions

(1) In any case in which (A) a vessel has been used in the commission of an act prohibited under section 1857 of this title, (B) the owner or operator of a vessel or any other person who has been issued or has applied for a permit under this chapter has acted in violation of section 1857 of this title, (C) any amount in settlement of a civil forfeiture imposed on a vessel or other property, or any civil penalty or criminal fine imposed on a vessel or owner or operator of a vessel or any other person who has been issued or has applied for a permit under any marine resource law enforced by the Secretary has not been paid and is overdue, or (D) any payment required for observer services provided to or contracted by an owner or operator who has been issued a permit or applied for a permit under any marine resource law administered by the Secretary has not been paid and is overdue, the Secretary may -

(i) revoke any permit issued with respect to such vessel or person, with or without prejudice to the issuance of subsequent permits;

(ii) suspend such permit for a period of time considered by the Secretary to be appropriate;

(iii) deny such permit; or

(iv) impose additional conditions and restrictions on any permit issued to or applied for by such vessel or person under this chapter and, with respect to foreign fishing vessels, on the approved application of the foreign nation involved and on any permit issued under that application.

(2) In imposing a sanction under this subsection, the Secretary shall take into account -

(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and

(B) with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require.

(3) Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is

pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel at the time of the transfer.

(4) In the case of any permit that is suspended under this subsection for nonpayment of a civil penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.

(5) No sanctions shall be imposed under this subsection unless there has been a prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this section or otherwise.

(Pub. L. 94-265, title III, Sec. 308, Apr. 13, 1976, 90 Stat. 356; Pub. L. 97-453, Sec. 10, Jan. 12, 1983, 96 Stat. 2491; Pub. L. 99-659, title I, Sec. 108, Nov. 14, 1986, 100 Stat. 3713; Pub. L. 101-627, title I, Sec. 114(a), Nov. 28, 1990, 104 Stat. 4454; Pub. L. 104-297, title I, Sec. 114(a)-(c), Oct. 11, 1996, 110 Stat. 3598, 3599.)

AMENDMENTS

1996 - Subsec. (a). Pub. L. 104-297, Sec. 114(a), struck out "ability to pay," after "history of prior offenses," and inserted at end "In assessing such penalty the Secretary may also consider any information provided by the violator relating to the ability of the violator to pay, Provided, That the information is served on the Secretary at least 30 days prior to an administrative hearing."

Subsec. (b). Pub. L. 104-297, Sec. 114(b), amended first sentence generally. Prior to amendment, first sentence read as follows: "Any person against whom a civil penalty is assessed under subsection (a) of this section may obtain review thereof in the United States district court for the appropriate district by filing a complaint in such court within 30 days from the date of such order and by simultaneously serving a copy of such complaint by certified mail on the Secretary, the Attorney General and the appropriate United States Attorney."

Subsec. (g)(1). Pub. L. 104-297, Sec. 114(c), substituted "(C) any amount in settlement of a civil forfeiture imposed on a vessel or other property, or any civil penalty or criminal fine imposed on a vessel or owner or operator of a vessel or any other person who has been issued or has applied for a permit under any marine resource law enforced by the Secretary has not been paid and is overdue, or (D) any payment required for observer services provided

to or contracted by an owner or operator who has been issued a permit or applied for a permit under any marine resource law administered by the Secretary has not been paid and is overdue," for "or (C) any civil penalty or criminal fine imposed on a vessel or owner or operator of a vessel or any other person who has been issued or has applied for a permit under any fishery resource law statute enforced by the Secretary has not been paid and is overdue,".

1990 - Pub. L. 101-627, Sec. 114(a)(1), inserted "and permit sanctions" after "penalties" in section catchline.

Subsec. (a). Pub. L. 101-627, Sec. 114(a)(2), substituted "\$100,000" for "\$25,000".

Subsec. (g). Pub. L. 101-627, Sec. 114(a)(3), added subsec. (g).

1986 - Subsec. (b). Pub. L. 99-659, Sec. 108(1), amended first sentence generally. Prior to amendment, the sentence read as follows: "Any person against whom a civil penalty is assessed under subsection (a) of this section may obtain review thereof in the appropriate court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary".

Subsecs. (d) to (f). Pub. L. 99-659, Sec. 108(2), (3), added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

1983 - Subsec. (e). Pub. L. 97-453 added subsec. (e).

EFFECTIVE DATE

Section effective Mar. 1, 1977, see section 312 of Pub. L. 94-265, formerly set out as a note under section 1857 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 971e, 1827, 1853, 3606, 3637, 5103, 5106, 5107a, 5606 of this title.

16 USC Sec. 1859

01/26/98

TITLE 16 - CONSERVATION CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT SUBCHAPTER IV - NATIONAL FISHERY MANAGEMENT PROGRAM

Sec. 1859. Criminal offenses

(a) Offenses

A person is guilty of an offense if he commits any act prohibited by -

(1) section 1857(1)(D), (E), (F), (H), (I), or (L) of this

title; or

(2) section 1857(2) of this title.

(b) Punishment

Any offense described in subsection (a)(1) of this section is punishable by a fine of not more than \$100,000, or imprisonment for not more than 6 months, or both; except that if in the commission of any such offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any observer described in section 1857(1)(L) of this title or any officer authorized to enforce the provisions of this chapter (as provided for in section 1861 of this title), or places any such observer or officer in fear of imminent bodily injury, the offense is punishable by a fine of not more than \$200,000, or imprisonment for not more than 10 years, or both. Any offense described in subsection (a)(2) of this section is punishable by a fine of not more than \$200,000.

(c) Jurisdiction

There is Federal jurisdiction over any offense described in this section.

(Pub. L. 94-265, title III, Sec. 309, Apr. 13, 1976, 90 Stat. 357; Pub. L. 97-453, Sec. 11(a), Jan. 12, 1983, 96 Stat. 2491; Pub. L. 99-659, title I, Sec. 107(b), Nov. 14, 1986, 100 Stat. 3713; Pub. L. 100-66, Sec. 2, July 10, 1987, 101 Stat. 384; Pub. L. 101-627, title I, Sec. 115, Nov. 28, 1990, 104 Stat. 4455.)

AMENDMENTS

1990 - Subsec. (a)(1). Pub. L. 101-627, Sec. 115(a), amended par. (1) generally, substituting "(I), or (L)" for "or (I)".

Subsec. (b). Pub. L. 101-627, Sec. 115(b), substituted "\$100,000" for "\$50,000", substituted "\$200,000" for "\$100,000" in two places, and inserted "any observer described in section 1857(1)(L) of this title or" after "injury to" and "observer or" before "officer in fear".

1987 - Subsec. (a)(1). Pub. L. 100-66 substituted "(I)" for "(J)".

1986 - Subsec. (a)(1). Pub. L. 99-659 substituted "(H), or (J)" for "or (H)".

1983 - Subsec. (b). Pub. L. 97-453 struck out ", or imprisonment for not more than 1 year, or both" after "subsection (a)(2) of this section is punishable by a fine of not more than \$100,000".

EFFECTIVE DATE OF 1983 AMENDMENT

Section 11(b) of Pub. L. 97-453 provided that: "The amendment made by subsection (a) (amending this section) applies with respect to offenses committed under section 309 (this section) on or after the date of the enactment of this Act (Jan. 12, 1983)."

EFFECTIVE DATE

Section effective Mar. 1, 1977, see section 312 of Pub. L. 94-265, formerly set out as a note under section 1857 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1853, 3606, 3637, 5103, 5106, 5606 of this title.

16 USC Sec. 1860

01/26/98

TITLE 16 - CONSERVATION

CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT

SUBCHAPTER IV - NATIONAL FISHERY MANAGEMENT PROGRAM

Sec. 1860. Civil forfeitures

(a) In general

Any fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any fish (or the fair market value thereof) taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 1857 of this title (other than any act for which the issuance of a citation under section 1861(c) of this title is sufficient sanction) shall be subject to forfeiture to the United States. All or part of such vessel may, and all such fish (or the fair market value thereof) shall, be forfeited to the United States pursuant to a civil proceeding under this section.

(b) Jurisdiction of district courts

Any district court of the United States which has jurisdiction under section 1861(d) of this title shall have jurisdiction, upon application by the Attorney General on behalf of the United States, to order any forfeiture authorized under subsection (a) of this section and any action provided for under subsection (d) of this section.

(c) Judgment

If a judgment is entered for the United States in a civil forfeiture proceeding under this section, the Attorney General may seize any property or other interest declared forfeited to the United States, which has not previously been seized pursuant to this chapter or for which security has not previously been obtained under subsection (d) of this section. The provisions of the customs laws relating to -

(1) the seizure, forfeiture, and condemnation of property for violation of the customs law;

(2) the disposition of such property or the proceeds from the sale thereof; and

(3) the remission or mitigation of any such forfeiture; shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, unless such provisions are inconsistent with the purposes, policy, and provisions of this chapter. The duties and powers imposed upon the Commissioner of Customs or other persons under such provisions shall, with respect to this chapter, be performed by officers or other persons designated for such purpose by the Secretary.

(d) Procedure

(1) Any officer authorized to serve any process in rem which is issued by a court having jurisdiction under section 1861(d) shall -

(A) stay the execution of such process; or

(B) discharge any fish seized pursuant to such process;

upon the receipt of a satisfactory bond or other security from any person claiming such property. Such bond or other security shall be conditioned upon such person (i) delivering such property to the appropriate court upon order thereof, without any impairment of its value, or (ii) paying the monetary value of such property pursuant to an order of such court. Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court. Nothing in this paragraph may be construed to require the Secretary, except in the Secretary's discretion or pursuant to the order of a court under section 1861(d) of this title, to release on bond any seized fish or other property or the proceeds from the sale thereof.

(2) Any fish seized pursuant to this chapter may be sold, subject to the approval and direction of the appropriate court, for not less than the fair market value thereof. The proceeds of any such sale shall be deposited with such court pending the disposition of the matter involved.

(e) Rebuttable presumptions

(1) For purposes of this section, it shall be a rebuttable presumption that all fish found on board a fishing vessel which is seized in connection with an act prohibited by section 1857 of this title were taken or retained in violation of this chapter.

(2) For purposes of this chapter, it shall be a rebuttable presumption that any fish of a species which spawns in fresh or estuarine waters and migrates to ocean waters that is found on board a vessel is of United States origin if the vessel is within the migratory range of the species during that part of the year to which the migratory range applies.

(3) For purposes of this chapter, it shall be a rebuttable presumption that any vessel that is shoreward of the outer boundary of the exclusive economic zone of the United States or beyond the exclusive economic zone of any nation, and that has gear on board

that is capable of use for large-scale driftnet fishing, is engaged in such fishing.

(Pub. L. 94-265, title III, Sec. 310, Apr. 13, 1976, 90 Stat. 357; Pub. L. 97-453, Sec. 12, Jan. 12, 1983, 96 Stat. 2491; Pub. L. 99-659, title I, Sec. 109(a), Nov. 14, 1986, 100 Stat. 3714; Pub. L. 101-627, title I, Sec. 116, Nov. 28, 1990, 104 Stat. 4456; Pub. L. 104-297, title I, Sec. 114(d), Oct. 11, 1996, 110 Stat. 3599.)

REFERENCES IN TEXT

The customs laws, referred to in subsec. (c), are classified generally to Title 19, Customs Duties.

AMENDMENTS

1996 - Subsec. (e)(3). Pub. L. 104-297 added par. (3).

1990 - Subsec. (e). Pub. L. 101-627 designated existing provisions as par. (1) and added par. (2).

1986 - Subsec. (c). Pub. L. 99-659, Sec. 109(a)(1), amended second sentence generally. Prior to amendment, second sentence of subsec. (c) read as follows: "The provisions of the customs laws relating to -

"(1) the disposition of forfeited property,

"(2) the proceeds from the sale of forfeited property,

"(3) the remission or mitigation of forfeitures, and

"(4) the compromise of claims,

shall apply to any forfeiture ordered, and to any case in which forfeiture is alleged to be authorized, under this section, unless such provisions are inconsistent with the purposes, policy, and provisions of this chapter."

Subsec. (d)(1). Pub. L. 99-659, Sec. 109(a)(2), inserted provision that nothing in this paragraph may be construed to require the Secretary, except in the Secretary's discretion or pursuant to the order of a court under section 1861(d) of this title, to release on bond any seized fish or other property or the proceeds from the sale thereof.

1983 - Subsec. (a). Pub. L. 97-453 inserted "(or the fair market value thereof)" after "fish" wherever appearing.

EFFECTIVE DATE

Section effective Mar. 1, 1977, see section 312 of Pub. L. 94-265, formerly set out as a note under section 1857 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1417, 1861, 3606, 3637, 5103, 5106, 5606 of this title.

TITLE 16 - CONSERVATION
CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT
SUBCHAPTER IV - NATIONAL FISHERY MANAGEMENT PROGRAM

Sec. 1861. Enforcement

(a) Responsibility

The provisions of this chapter shall be enforced by the Secretary and the Secretary of the department in which the Coast Guard is operating. Such Secretaries may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency, including all elements of the Department of Defense, and of any State agency, in the performance of such duties.

(b) Powers of authorized officers

(1) Any officer who is authorized (by the Secretary, the Secretary of the department in which the Coast Guard is operating, or the head of any Federal or State agency which has entered into an agreement with such Secretaries under subsection (a) of this section) to enforce the provisions of this chapter may -

(A) with or without a warrant or other process -

(i) arrest any person, if he has reasonable cause to believe that such person has committed an act prohibited by section 1857 of this title;

(ii) board, and search or inspect, any fishing vessel which is subject to the provisions of this chapter;

(iii) seize any fishing vessel (together with its fishing gear, furniture, appurtenances, stores, and cargo) used or employed in, or with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of this chapter;

(iv) seize any fish (wherever found) taken or retained in violation of any provision of this chapter; and

(v) seize any other evidence related to any violation of any provision of this chapter;

(B) execute any warrant or other process issued by any court of competent jurisdiction; and

(C) exercise any other lawful authority.

(2) Subject to the direction of the Secretary, a person charged with law enforcement responsibilities by the Secretary who is performing a duty related to enforcement of a law regarding fisheries or other marine resources may make an arrest without a warrant for an offense against the United States committed in his

presence, or for a felony cognizable under the laws of the United States, if he has reasonable grounds to believe that the person to be arrested has committed or is committing a felony. The arrest authority described in the preceding sentence may be conferred upon an officer or employee of a State agency, subject to such conditions and restrictions as are set forth by agreement between the State agency, the Secretary, and, with respect to enforcement operations within the exclusive economic zone, the Secretary of the department in which the Coast Guard is operating.

(c) Issuance of citations

If any officer authorized to enforce the provisions of this chapter (as provided for in this section) finds that a fishing vessel is operating or has been operated in violation of any provision of this chapter, such officer may, in accordance with regulations issued jointly by the Secretary and the Secretary of the department in which the Coast Guard is operating, issue a citation to the owner or operator of such vessel in lieu of proceeding under subsection (b) of this section. If a permit has been issued pursuant to this chapter for such vessel, such officer shall note the issuance of any citation under this subsection, including the date thereof and the reason therefor, on the permit. The Secretary shall maintain a record of all citations issued pursuant to this subsection.

(d) Jurisdiction of courts

The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this chapter. In the case of Guam or any possession of the United States in the Pacific Ocean, the appropriate court is the United States District Court for the District of Guam, except that in the case of American Samoa, the appropriate court is the United States District Court for the District of Hawaii, and except that in the case of the Northern Mariana Islands, the appropriate court is the United States District Court for the District of the Northern Mariana Islands. Any such court may, at any time -

- (1) enter restraining orders or prohibitions;
- (2) issue warrants, process in rem, or other process;
- (3) prescribe and accept satisfactory bonds or other security;

and

- (4) take such other actions as are in the interest of justice.

(e) Payment of storage, care, and other costs

(1) Notwithstanding any other provision of law, the Secretary or the Secretary of the Treasury may pay from sums received as fines, penalties, and forfeitures of property for violations of any provisions of this chapter or of any other marine resource law enforced by the Secretary, including the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.) -

(A) the reasonable and necessary costs incurred in providing temporary storage, care, and maintenance of seized fish or other property pending disposition of any civil or criminal proceeding alleging a violation of any provision of this chapter or any other marine resource law enforced by the Secretary with respect to that fish or other property;

(B) a reward of not less than 20 percent of the penalty collected or \$20,000, whichever is the lesser amount, to any person who furnishes information which leads to an arrest, conviction, civil penalty assessment, or forfeiture of property for any violation of any provision of this chapter or any other marine resource law enforced by the Secretary;

(C) any expenses directly related to investigations and civil or criminal enforcement proceedings, including any necessary expenses for equipment, training, travel, witnesses, and contracting services directly related to such investigations or proceedings;

(D) any valid liens or mortgages against any property that has been forfeited;

(E) claims of parties in interest to property disposed of under section 1612(b) of title 19, as made applicable by section 1860(c) of this title or by any other marine resource law enforced by the Secretary, to seizures made by the Secretary, in amounts determined by the Secretary to be applicable to such claims at the time of seizure; and

(F) reimbursement to any Federal or State agency, including the Coast Guard, for services performed, or personnel, equipment, or facilities utilized, under any agreement with the Secretary entered into pursuant to subsection (a) of this section, or any similar agreement authorized by law.

(2) Any person found in an administrative or judicial proceeding to have violated this chapter or any other marine resource law enforced by the Secretary shall be liable for the cost incurred in the sale, storage, care, and maintenance of any fish or other property lawfully seized in connection with the violation.

(f) Enforcement of Northeast Multispecies Fishery Management Plan

(1) Enforcement agreements

Beginning not later than October 1, 1993, the Secretary shall, if requested by the Governor of a State represented on the New England Fishery Management Council, enter into an agreement under subsection (a) of this section, with each of the States represented on such Council, that authorizes the marine law enforcement agency of such State to perform duties of the Secretary relating to enforcement of the Northeast Multispecies Fishery Management Plan.

(2) Reimbursement

An agreement with a State under this subsection shall provide, subject to the availability of appropriations, for reimbursement of the State for expenses incurred in detection and prosecution of violations of any fishery management plan approved by the Secretary.

(3) Coast Guard enforcement working group

(A) Establishment

The Commander of the First Coast Guard District shall establish an informal fisheries enforcement working group to improve the overall compliance with and effectiveness of the regulations issued under the Northeast Multispecies Fishery Management Plan.

(B) Membership

The working group shall consist of members selected by the Commander, and shall include -

- (i) individuals who are representatives of various fishing ports located in the States represented on the New England Fishery Management Council;
- (ii) captains of fishing vessels that operate in waters under the jurisdiction of that Council; and
- (iii) other individuals the Commander considers appropriate.

(C) Non-Federal status of working group members

An individual shall not receive any compensation for, and shall not be considered to be a Federal employee based on, membership in the working group.

(D) Meetings

The working group shall meet, at the call of the Commander, at least 4 times each year. The meetings shall be held at various major fishing ports in States represented on the New England Fishery Management Council, as specified by the Commander.

(4) Use of fines and penalties

Amounts available to the Secretary under this chapter which are attributable to fines and penalties imposed for violations of the Northeast Multispecies Fishery Management Plan shall be used by the Secretary pursuant to this section to enforce that Plan.

(g) Enforcement in Pacific Insular Areas

The Secretary, in consultation with the Governors of the Pacific Insular Areas and the Western Pacific Council, shall to the extent practicable support cooperative enforcement agreements between Federal and Pacific Insular Area authorities.

(h) Definitions

For purposes of this section -

- (1) The term "provisions of this chapter" includes (A) any regulation or permit issued pursuant to this chapter, and (B) any

provision of, or regulation issued pursuant to, any international fishery agreement under which foreign fishing is authorized by section 1821(b) or (c) of this title, or section 1824(d) of this title, with respect to fishing subject to the exclusive fishery management authority of the United States.

(2) The term "violation of any provision of this chapter" includes (A) the commission of any act prohibited by section 1857 of this title, and (B) the violation of any regulation, permit, or agreement referred to in paragraph (1).

(Pub. L. 94-265, title III, Sec. 311, Apr. 13, 1976, 90 Stat. 358; Pub. L. 96-470, title II, Sec. 209(e), Oct. 19, 1980, 94 Stat. 2245; Pub. L. 97-453, Sec. 13, 15(c), Jan. 12, 1983, 96 Stat. 2491, 2493; Pub. L. 99-659, title I, Sec. 101(c)(2), 109(b), Nov. 14, 1986, 100 Stat. 3707, 3714; Pub. L. 101-627, title I, Sec. 117, Nov. 28, 1990, 104 Stat. 4456; Pub. L. 102-251, title III, Sec. 301(i), Mar. 9, 1992, 106 Stat. 64; Pub. L. 102-567, title IX, Sec. 901, Oct. 29, 1992, 106 Stat. 4316; Pub. L. 104-297, title I, Sec. 115, Oct. 11, 1996, 110 Stat. 3599.)

AMENDMENT OF SUBSECTION (B)(2)

Pub. L. 102-251, title III, Sec. 301(i), 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 (b)(2) is amended by inserting "and special areas," after "exclusive economic zone".

REFERENCES IN TEXT

The Lacey Act Amendments of 1981, referred to in subsec. (e), is Pub. L. 97-79, Nov. 16, 1981, 95 Stat. 1073, as amended, which enacted chapter 53 (Sec. 3371 et seq.) of this title, amended section 1540 of this title and section 42 of Title 18, Crimes and Criminal Procedure, repealed sections 667e and 851 to 856 of this title and sections 43, 44, 3054, and 3112 of Title 18, and enacted provisions set out as notes under sections 1540 and 3371 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3371 of this title and Tables.

The customs laws, referred to in subsec. (e)(1)(E), are classified generally to Title 19, Customs Duties.

AMENDMENTS

1996 - Subsec. (d). Pub. L. 104-297, Sec. 115(a)(2), inserted ", and except that in the case of the Northern Mariana Islands, the appropriate court is the United States District Court for the District of the Northern Mariana Islands" after "District of Hawaii".

Pub. L. 104-297, Sec. 115(a)(1), which directed substitution of "Guam or any" for "Guam, any Commonwealth, territory, or", was executed by making the substitution for "Guam, and any Commonwealth, territory, or", to reflect the probable intent of Congress.

Subsec. (e)(1). Pub. L. 104-297, Sec. 115(b)(1), substituted "marine resource law" for "fishery resource law" in introductory provisions and in subpars. (A) and (B).

Subsec. (e)(1)(B). Pub. L. 104-297, Sec. 115(b)(2), inserted "of not less than 20 percent of the penalty collected or \$20,000, whichever is the lesser amount," after "reward".

Subsec. (e)(1)(E). Pub. L. 104-297, Sec. 115(b)(3), added subpar. (E) and struck out former subpar. (E) which read as follows: "claims of parties in interest to property disposed of under section 1612(b) of title 19 or under other provisions of the customs laws, as made applicable by section 1860(c) of this title to seizures made by the Secretary under this chapter, in amounts determined by the Secretary to be applicable to such claims at the time of seizure; and".

Subsec. (e)(2). Pub. L. 104-297, Sec. 115(c), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Any person assessed a civil penalty for, or convicted of, any violation of this chapter shall be liable for the cost incurred in storage, care, and maintenance of any fish or other property seized in connection with the violation."

Subsec. (g). Pub. L. 104-297, Sec. 115(d), added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 104-297, Sec. 115(d), redesignated subsec. (g) as (h).

Subsec. (h)(1). Pub. L. 104-297, Sec. 115(e), which directed amendment of subsec. (i)(1) by substituting "1821(b) or (c) of this title, or section 1824(d) of this title," for "1821(b), (c) of this title," was executed by making the substitution for "1821(b) or (c) of this title" in subsec. (h)(1) to reflect the probable intent of Congress because this section does not contain a subsec. (i).

1992 - Subsecs. (f), (g). Pub. L. 102-567 added subsec. (f) and redesignated former subsec. (f) as (g).

1990 - Subsec. (e). Pub. L. 101-627 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows:

"Notwithstanding any other provision of law, after September 30, 1986, the Secretary or the Secretary of the Treasury may pay from sums received as fines, penalties, or forfeitures of property for violations of any provision of this chapter -

"(1) the reasonable and necessary costs incurred in providing temporary storage, care, and maintenance of seized fish or other property pending disposition of any civil or criminal proceeding alleging a violation of any provision of this chapter with respect to that fish or other property; and

"(2) a reward to any person who furnishes information which leads to an arrest, conviction, civil penalty assessment, or forfeiture of property for any violation of any provision of this chapter.

Any person assessed a civil penalty for, or convicted of, any violation of any provision of this chapter shall be liable for the cost incurred in storage, care, and maintenance of any fish or other property seized in connection with the violation concerned."

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

Subsecs. (e), (f). Pub. L. 99-659, Sec. 109(b), added subsec. (e) and redesignated former subsec. (e) as (f).

1983 - Subsec. (a). Pub. L. 97-453, Sec. 15(c), struck out provision that the Secretaries were to report annually on June 30, to each committee of the Congress listed in section 1823(b) of this title and to the Councils, on the degree and extent of known and estimated compliance with the provisions of this chapter during the preceding calendar year.

Subsec. (b)(1). Pub. L. 97-453, Sec. 13(1), designated existing provisions as par. (1).

Subsec. (b)(1)(A). Pub. L. 97-453, Sec. 13(2), (3), redesignated former par. (1) as subpar. (A) and, in subpar. (A) as redesignated, redesignated former subpars. (A) to (E) as cls. (i) to (v), respectively.

Subsec. (b)(1)(B), (C). Pub. L. 97-453, Sec. 13(2), redesignated former pars. (2) and (3) as subpars. (B) and (C), respectively.

Subsec. (b)(2). Pub. L. 97-453, Sec. 13(4), added par. (2).

1980 - Subsec. (a). Pub. L. 96-470 substituted "annually on June 30" for "semiannually" and inserted "during the preceding calendar year" after "with the provisions of this chapter".

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

Section effective Mar. 1, 1977, see section 312 of Pub. L. 94-265, formerly set out as a note under section 1857 of this title.

AGREEMENT TO MAKE MORE EFFECTIVE ENFORCEMENT OF DOMESTIC LAWS AND INTERNATIONAL AGREEMENTS

Pub. L. 102-582, title II, Sec. 202, Nov. 2, 1992, 106 Stat. 4905, provided that not later than six months after Nov. 2, 1992, the Secretary of the department in which the Coast Guard is operating, the Secretary of Commerce, and the Secretary of Defense were to enter into an agreement under subsec. (a) of this section to make more effective the enforcement of domestic laws and international agreements that conserve and manage living marine resources of the United States.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1821, 1824, 1857, 1859,

16 USC Sec. 1861a

01/26/98

TITLE 16 - CONSERVATION

CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT

SUBCHAPTER IV - NATIONAL FISHERY MANAGEMENT PROGRAM

Sec. 1861a. Transition to sustainable fisheries

(a) Fisheries disaster relief

(1) At the discretion of the Secretary or at the request of the Governor of an affected State or a fishing community, the Secretary shall determine whether there is a commercial fishery failure due to a fishery resource disaster as a result of -

(A) natural causes;

(B) man-made causes beyond the control of fishery managers to mitigate through conservation and management measures; or

(C) undetermined causes.

(2) Upon the determination under paragraph (1) that there is a commercial fishery failure, the Secretary is authorized to make sums available to be used by the affected State, fishing community, or by the Secretary in cooperation with the affected State or fishing community for assessing the economic and social effects of the commercial fishery failure, or any activity that the Secretary determines is appropriate to restore the fishery or prevent a similar failure in the future and to assist a fishing community

affected by such failure. Before making funds available for an activity authorized under this section, the Secretary shall make a determination that such activity will not expand the size or scope of the commercial fishery failure in that fishery or into other fisheries or other geographic regions.

(3) The Federal share of the cost of any activity carried out under the authority of this subsection shall not exceed 75 percent of the cost of that activity.

(4) There are authorized to be appropriated to the Secretary such sums as are necessary for each of the fiscal years 1996, 1997, 1998, and 1999.

(b) Fishing capacity reduction program

(1) The Secretary, at the request of the appropriate Council for fisheries under the authority of such Council, or the Governor of a State for fisheries under State authority, may conduct a fishing capacity reduction program (referred to in this section as the "program") in a fishery if the Secretary determines that the program -

(A) is necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the fishery;

(B) is consistent with the Federal or State fishery management plan or program in effect for such fishery, as appropriate, and that the fishery management plan -

(i) will prevent the replacement of fishing capacity removed by the program through a moratorium on new entrants, restrictions on vessel upgrades, and other effort control measures, taking into account the full potential fishing capacity of the fleet; and

(ii) establishes a specified or target total allowable catch or other measures that trigger closure of the fishery or adjustments to reduce catch; and

(C) is cost-effective and capable of repaying any debt obligation incurred under section 1279f (FOOTNOTE 1) of title 46, Appendix.

(FOOTNOTE 1) See References in Text note below.

(2) The objective of the program shall be to obtain the maximum sustained reduction in fishing capacity at the least cost and in a minimum period of time. To achieve that objective, the Secretary is authorized to pay -

(A) the owner of a fishing vessel, if such vessel is (i) scrapped, or (ii) through the Secretary of the department in which the Coast Guard is operating, subjected to title restrictions that permanently prohibit and effectively prevent its use in fishing, and if the permit authorizing the participation of the vessel in the fishery is surrendered for

permanent revocation and the owner relinquishes any claim associated with the vessel and permit that could qualify such owner for any present or future limited access system permit in the fishery for which the program is established; or

(B) the holder of a permit authorizing participation in the fishery, if such permit is surrendered for permanent revocation, and such holder relinquishes any claim associated with the permit and vessel used to harvest fishery resources under the permit that could qualify such holder for any present or future limited access system permit in the fishery for which the program was established.

(3) Participation in the program shall be voluntary, but the Secretary shall ensure compliance by all who do participate.

(4) The Secretary shall consult, as appropriate, with Councils, Federal agencies, State and regional authorities, affected fishing communities, participants in the fishery, conservation organizations, and other interested parties throughout the development and implementation of any program under this section.

(c) Program funding

(1) The program may be funded by any combination of amounts -

(A) available under clause (iv) of section 713c-3(b)(1)(A) of title 15;

(B) appropriated for the purposes of this section;

(C) provided by an industry fee system established under subsection (d) of this section and in accordance with section 1279f (FOOTNOTE 1) of title 46, Appendix; or

(D) provided from any State or other public sources or private or non-profit organizations.

(2) All funds for the program, including any fees established under subsection (d) of this section, shall be paid into the fishing capacity reduction fund established under section 1279f (FOOTNOTE 1) of title 46, Appendix.

(d) Industry fee system

(1)(A) If an industry fee system is necessary to fund the program, the Secretary, at the request of the appropriate Council, may conduct a referendum on such system. Prior to the referendum, the Secretary, in consultation with the Council, shall -

(i) identify, to the extent practicable, and notify all permit or vessel owners who would be affected by the program; and

(ii) make available to such owners information about the industry fee system describing the schedule, procedures, and eligibility requirements for the referendum, the proposed program, and the amount and duration and any other terms and conditions of the proposed fee system.

(B) The industry fee system shall be considered approved if the referendum votes which are cast in favor of the proposed system

constitute a two-thirds majority of the participants voting.

(2) Notwithstanding section 1854(d) of this title and consistent with an approved industry fee system, the Secretary is authorized to establish such a system to fund the program and repay debt obligations incurred pursuant to section 1279f (FOOTNOTE 1) of title 46, Appendix. The fees for a program established under this section shall -

(A) be determined by the Secretary and adjusted from time to time as the Secretary considers necessary to ensure the availability of sufficient funds to repay such debt obligations;

(B) not exceed 5 percent of the ex-vessel value of all fish harvested from the fishery for which the program is established;

(C) be deducted by the first ex-vessel fish purchaser from the proceeds otherwise payable to the seller and accounted for and forwarded by such fish purchasers to the Secretary in such manner as the Secretary may establish; and

(D) be in effect only until such time as the debt obligation has been fully paid.

(e) Implementation plan

(1) The Secretary, in consultation with the appropriate Council or State and other interested parties, shall prepare and publish in the Federal Register for a 60-day public comment period an implementation plan, including proposed regulations, for each program. The implementation plan shall -

(A) define criteria for determining types and numbers of vessels which are eligible for participation in the program taking into account characteristics of the fishery, the requirements of applicable fishery management plans, the needs of fishing communities, and the need to minimize program costs; and

(B) establish procedures for program participation (such as submission of owner bid under an auction system or fair market-value assessment) including any terms and conditions for participation which the Secretary deems to be reasonably necessary to meet the goals of the program.

(2) During the 60-day public comment period -

(A) the Secretary shall conduct a public hearing in each State affected by the program; and

(B) the appropriate Council or State shall submit its comments and recommendations, if any, regarding the plan and regulations.

(3) Within 45 days after the close of the public comment period, the Secretary, in consultation with the appropriate Council or State, shall analyze the public comment received and publish in the Federal Register a final implementation plan for the program and regulations for its implementation. The Secretary may not adopt a final implementation plan involving industry fees or debt obligation unless an industry fee system has been approved by a

referendum under this section.

(Pub. L. 94-265, title III, Sec. 312, as added Pub. L. 104-297, title I, Sec. 116(a), Oct. 11, 1996, 110 Stat. 3600.)

REFERENCES IN TEXT

Section 1279f of title 46, Appendix, referred to in subsecs. (b)(1)(C), (c)(1)(C), (2), and (d)(2), was in the original a reference to section 1111 of title XI of the Merchant Marine Act, 1936, and was translated as meaning the section 1111 of that Act added by Pub. L. 104-297, Sec. 303(a), to reflect the probable intent of Congress. Another section 1111 of title XI of the Merchant Marine Act, 1936, relating to loan guarantees for eligible vessels, is classified to section 1279d of Title 46, Appendix, Shipping.

PRIOR PROVISIONS

A prior section 312 of Pub. L. 94-265, title III, Apr. 13, 1976, 90 Stat. 359, was set out as an Effective Date note under section 1857 of this title, prior to being amended generally by Pub. L. 104-297.

STUDY OF FEDERAL INVESTMENT IN FISHERIES

Section 116(b) of Pub. L. 104-297, as amended by Pub. L. 104-208, div. A, title I, Sec. 101(a) (title II, Sec. 211(b)), Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that: "The Secretary of Commerce shall establish a task force comprised of interested parties to study and report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives within 2 years of the date of enactment of this Act (Oct. 11, 1996) on the role of the Federal Government in -

"(1) subsidizing the expansion and contraction of fishing capacity in fishing fleets managed under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.); and

"(2) otherwise influencing the aggregate capital investments in fisheries."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 713c-3; title 46 App. section 1279f.

16 USC Sec. 1862

01/26/98

TITLE 16 - CONSERVATION

CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT

SUBCHAPTER IV - NATIONAL FISHERY MANAGEMENT PROGRAM

Sec. 1862. North Pacific fisheries conservation

(a) In general

The North Pacific Council may prepare, in consultation with the Secretary, a fisheries research plan for all fisheries under the Council's jurisdiction except salmon fisheries which -

(1) requires that observers be stationed on fishing vessels engaged in the catching, taking, or harvesting of fish and on United States fish processors fishing for or processing species under the jurisdiction of the Council, including the Northern Pacific halibut fishery, for the purpose of collecting data necessary for the conservation, management, and scientific understanding of any fisheries under the Council's jurisdiction; and

(2) establishes a system of fees to pay for the costs of implementing the plan.

(b) Standards

(1) Any plan or plan amendment prepared under this section shall be reasonably calculated to -

(A) gather reliable data, by stationing observers on all or a statistically reliable sample of the fishing vessels and United States fish processors included in the plan, necessary for the conservation, management, and scientific understanding of the fisheries covered by the plan;

(B) be fair and equitable to all vessels and processors;

(C) be consistent with applicable provisions of law; and

(D) take into consideration the operating requirements of the fisheries and the safety of observers and fishermen.

(2) Any system of fees established under this section shall -

(A) provide that the total amount of fees collected under this section not exceed the combined cost of (i) stationing observers on board fishing vessels and United States fish processors, (ii) the actual cost of inputting collected data, and (iii) assessments necessary for a risk-sharing pool implemented under subsection (e) of this section, less any amount received for such purpose from another source or from an existing surplus in the North Pacific Fishery Observer Fund established in subsection (d) of this section;

(B) be fair and equitable to all participants in the fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(C) provide that fees collected not be used to pay any costs of administrative overhead or other costs not directly incurred in carrying out the plan;

(D) not be used to offset amounts authorized under other provisions of law;

(E) be expressed as a percentage, not to exceed 2 percent, of the unprocessed ex-vessel value of fish and shellfish harvested under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(F) be assessed against all fishing vessels and United States fish processors, including those not required to carry an observer under the plan, participating in fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(G) provide that fees collected will be deposited in the North Pacific Fishery Observer Fund established under subsection (d) of this section;

(H) provide that fees collected will only be used for implementing the plan established under this section; and

(I) meet the requirements of section 9701(b) of title 31.

(c) Action by Secretary

(1) Within 60 days after receiving a plan or plan amendment from the North Pacific Council under this section, the Secretary shall review such plan or plan amendment and either (A) remand such plan or plan amendment to the Council with comments if it does not meet the requirements of this section, or (B) publish in the Federal Register proposed regulations for implementing such plan or plan amendment.

(2) During the 60-day public comment period, the Secretary shall conduct a public hearing in each State represented on the Council for the purpose of receiving public comments on the proposed regulations.

(3) Within 45 days of the close of the public comment period, the Secretary, in consultation with the Council, shall analyze the public comment received and publish final regulations for implementing such plan.

(4) If the Secretary remands a plan or plan amendment to the Council for failure to meet the requirements of this section, the Council may resubmit such plan or plan amendment at any time after taking action the Council believes will address the defects identified by the Secretary. Any plan or plan amendment resubmitted to the Secretary will be treated as an original plan submitted to the Secretary under paragraph (1) of this subsection.

(d) Fishery Observer Fund

There is established in the Treasury a North Pacific Fishery Observer Fund. The Fund shall be available, without appropriation or fiscal year limitation, only to the Secretary for the purpose of carrying out the provisions of this section, subject to the restrictions in subsection (b)(2) of this section. The Fund shall

consist of all monies deposited into it in accordance with this section. Sums in the Fund that are not currently needed for the purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(e) Special provisions regarding observers

(1) The Secretary shall review -

(A) the feasibility of establishing a risk sharing pool through a reasonable fee, subject to the limitations of subsection

(b)(2)(E) of this section, to provide coverage for vessels and owners against liability from civil suits by observers, and

(B) the availability of comprehensive commercial insurance for vessel and owner liability against civil suits by observers.

(2) If the Secretary determines that a risk sharing pool is feasible, the Secretary shall establish such a pool, subject to the provisions of subsection (b)(2) of this section, unless the Secretary determines that -

(A) comprehensive commercial insurance is available for all fishing vessels and United States fish processors required to have observers under the provisions of this section, and

(B) such comprehensive commercial insurance will provide a greater measure of coverage at a lower cost to each participant.

(f) Bycatch reduction

In implementing section 1853(a)(11) of this title and this section, the North Pacific Council shall submit conservation and management measures to lower, on an annual basis for a period of not less than four years, the total amount of economic discards occurring in the fisheries under its jurisdiction.

(g) Bycatch reduction incentives

(1) Notwithstanding section 1854(d) of this title, the North Pacific Council may submit, and the Secretary may approve, consistent with the provisions of this chapter, a system of fines in a fishery to provide incentives to reduce bycatch and bycatch rates; except that such fines shall not exceed \$25,000 per vessel per season. Any fines collected shall be deposited in the North Pacific Fishery Observer Fund, and may be made available by the Secretary to offset costs related to the reduction of bycatch in the fishery from which such fines were derived, including conservation and management measures and research, and to the State of Alaska to offset costs incurred by the State in the fishery from which such penalties were derived or in fisheries in which the State is directly involved in management or enforcement and which are directly affected by the fishery from which such penalties were derived.

(2)(A) Notwithstanding section 1853(d) of this title, and in addition to the authority provided in section 1853(b)(10) of this title, the North Pacific Council may submit, and the Secretary may

approve, conservation and management measures which provide allocations of regulatory discards to individual fishing vessels as an incentive to reduce per vessel bycatch and bycatch rates in a fishery, Provided, That -

(i) such allocations may not be transferred for monetary consideration and are made only on an annual basis; and

(ii) any such conservation and management measures will meet the requirements of subsection (h) of this section and will result in an actual reduction in regulatory discards in the fishery.

(B) The North Pacific Council may submit restrictions in addition to the restriction imposed by clause (i) of subparagraph (A) on the transferability of any such allocations, and the Secretary may approve such recommendation.

(h) Catch measurement

(1) By June 1, 1997 the North Pacific Council shall submit, and the Secretary may approve, consistent with the other provisions of this chapter, conservation and management measures to ensure total catch measurement in each fishery under the jurisdiction of such Council. Such measures shall ensure the accurate enumeration, at a minimum, of target species, economic discards, and regulatory discards.

(2) To the extent the measures submitted under paragraph (1) do not require United States fish processors and fish processing vessels (as defined in chapter 21 of title 46) to weigh fish, the North Pacific Council and the Secretary shall submit a plan to the Congress by January 1, 1998, to allow for weighing, including recommendations to assist such processors and processing vessels in acquiring necessary equipment, unless the Council determines that such weighing is not necessary to meet the requirements of this subsection.

(i) Full retention and utilization

(1) The North Pacific Council shall submit to the Secretary by October 1, 1998 a report on the advisability of requiring the full retention by fishing vessels and full utilization by United States fish processors of economic discards in fisheries under its jurisdiction if such economic discards, or the mortality of such economic discards, cannot be avoided. The report shall address the projected impacts of such requirements on participants in the fishery and describe any full retention and full utilization requirements that have been implemented.

(2) The report shall address the advisability of measures to minimize processing waste, including standards setting minimum percentages which must be processed for human consumption. For the purpose of the report, "processing waste" means that portion of any fish which is processed and which could be used for human

consumption or other commercial use, but which is not so used.

(Pub. L. 94-265, title III, Sec. 313, as added Pub. L. 101-627, title I, Sec. 118(a), Nov. 28, 1990, 104 Stat. 4457; amended Pub. L. 102-582, title IV, Sec. 404, Nov. 2, 1992, 106 Stat. 4909; Pub. L. 104-297, title I, Sec. 117(a), Oct. 11, 1996, 110 Stat. 3603.)

AMENDMENTS

1996 - Pub. L. 104-297, Sec. 117(a)(1), substituted "conservation" for "research plan" in section catchline.

Subsec. (a). Pub. L. 104-297, Sec. 117(a)(2), substituted "North Pacific Council" for "North Pacific Fishery Management Council" in introductory provisions.

Subsecs. (f) to (i). Pub. L. 104-297, Sec. 117(a)(3), added subsecs. (f) to (i).

1992 - Subsec. (b)(2)(E). Pub. L. 102-582 substituted "2 percent, of the unprocessed ex-vessel" for "one percentum, of the".

16 USC Sec. 1863

01/26/98

TITLE 16 - CONSERVATION

CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT

SUBCHAPTER IV - NATIONAL FISHERY MANAGEMENT PROGRAM

Sec. 1863. Northwest Atlantic Ocean Fisheries Reinvestment Program

(a) Program

(1) Not later than October 1, 1993, the Secretary shall establish a Northwest Atlantic Ocean Fisheries Reinvestment Program for the purposes of -

(A) promoting development of commercial fisheries and markets for underutilized species of the northwest Atlantic Ocean;

(B) developing alternative fishing opportunities for participants in the New England groundfish fishery;

(C) providing technical support and assistance to United States fishermen and fish processors to improve the value-added processing of underutilized species and to make participation in fisheries for underutilized species of the northwest Atlantic Ocean economically viable;

(D) creating new economic opportunities through the improved processing and expanded use of fish waste; and

(E) helping to restore overfished New England groundfish stocks through aquaculture or hatchery programs.

(2) Consultation. - In establishing and implementing the Northwest Fisheries Reinvestment Program, the Secretary shall

consult with representatives of the commercial fishing industry, the seafood processing industry, and the academic community (including the National Sea Grant Program).

(3) Activities Under Program. - Subject to the availability of appropriations, the Secretary shall award contracts, grants and other financial assistance to United States citizens to carry out the purposes of subsection (FOOTNOTE 1) (1), under the terms and conditions provided in section 713c-3(c) of title 15, except that, in making awards under this section for projects involving participation in fisheries for underutilized species, the Secretary shall give the highest priority to a person who owns or operates a fishing vessel permitted under this chapter to participate in the New England groundfish fishery who agrees to surrender that permit to the Secretary during the duration of the contract, grant or other assistance.

(FOOTNOTE 1) So in original. Probably should be "paragraph".

(4) Authorization of Appropriations. - There are authorized to be appropriated \$5,000,000 for each of fiscal years 1993 through 1999 to carry out the purposes of this section. For fiscal year 1993 no more than \$1,000,000, and for fiscal year 1994 no more than \$2,000,000, of such funds may be provided from monies made available under section 713c-3(b) of title 15.

(b) Assistance of other agencies

The Secretary shall actively seek the assistance of other Federal agencies in the development of fisheries for underutilized species of the northwest Atlantic Ocean, including, to the extent permitted by other applicable laws, assistance from the Secretary of Agriculture in including such underutilized species as agricultural commodities in the programs of the Foreign Agricultural Service for which amounts are authorized under the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101-624; 104 Stat. 3359).

(c) Management plans for underutilized species

The New England Fishery Management Council, in consultation with other appropriate Councils, shall develop fishery management plans as soon as possible for any underutilized species of the northwest Atlantic Ocean that is not covered under such a plan, in order to prevent overfishing of that species.

(d) "Underutilized species" defined

For purposes of this section, the term "underutilized species of the northwest Atlantic Ocean" means any fish species of the northwest Atlantic Ocean that is identified, by the Director of the Northeast Fisheries Center of the National Marine Fisheries Service, as an underutilized species.

(Pub. L. 94-265, title III, Sec. 314, as added Pub. L. 102-567,

title IX, Sec. 902(a), Oct. 29, 1992, 106 Stat. 4317; amended Pub. L. 104-297, title I, Sec. 117(b), Oct. 11, 1996, 110 Stat. 3604.)

REFERENCES IN TEXT

The Food, Agriculture, Conservation, and Trade Act of 1990, referred to in subsec. (b), is Pub. L. 101-624, Nov. 28, 1990, 104 Stat. 3359, as amended. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 1421 of Title 7, Agriculture, and Tables.

AMENDMENTS

1996 - Subsec. (a)(4). Pub. L. 104-297 substituted "1999" for "1997".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 713c-3.

16 USC SUBCHAPTER V - FISHERY MONITORING AND RESEARCH 01/26/98

TITLE 16 - CONSERVATION
CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT
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SUBCHAPTER V - FISHERY MONITORING AND RESEARCH

16 USC Sec. 1881 01/26/98

TITLE 16 - CONSERVATION
CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT
SUBCHAPTER V - FISHERY MONITORING AND RESEARCH

Sec. 1881. Registration and information management

(a) Standardized fishing vessel registration and information management system

The Secretary shall, in cooperation with the Secretary of the department in which the Coast Guard is operating, the States, the Councils, and Marine Fisheries Commissions, develop recommendations for implementation of a standardized fishing vessel registration and information management system on a regional basis. The recommendations shall be developed after consultation with interested governmental and nongovernmental parties and shall -

(1) be designed to standardize the requirements of vessel registration and information collection systems required by this chapter, the Marine Mammal Protection Act (16 U.S.C. 1361 et seq.), and any other marine resource law implemented by the

Secretary, and, with the permission of a State, any marine resource law implemented by such State;

(2) integrate information collection programs under existing fishery management plans into a non-duplicative information collection and management system;

(3) avoid duplication of existing State, tribal, or Federal systems and shall utilize, to the maximum extent practicable, information collected from existing systems;

(4) provide for implementation of the system through cooperative agreements with appropriate State, regional, or tribal entities and Marine Fisheries Commissions;

(5) provide for funding (subject to appropriations) to assist appropriate State, regional, or tribal entities and Marine Fisheries Commissions in implementation;

(6) establish standardized units of measurement, nomenclature, and formats for the collection and submission of information;

(7) minimize the paperwork required for vessels registered under the system;

(8) include all species of fish within the geographic areas of authority of the Councils and all fishing vessels including charter fishing vessels, but excluding recreational fishing vessels;

(9) require United States fish processors, and fish dealers and other first ex-vessel purchasers of fish that are subject to the proposed system, to submit information (other than economic information) which may be necessary to meet the goals of the proposed system; and

(10) include procedures necessary to ensure -

(A) the confidentiality of information collected under this section in accordance with section 1881a(b) of this title; and

(B) the timely release or availability to the public of information collected under this section consistent with section 1881a(b) of this title.

(b) Fishing vessel registration

The proposed registration system should, at a minimum, obtain the following information for each fishing vessel -

(1) the name and official number or other identification, together with the name and address of the owner or operator or both;

(2) gross tonnage, vessel capacity, type and quantity of fishing gear, mode of operation (catcher, catcher processor, or other), and such other pertinent information with respect to vessel characteristics as the Secretary may require; and

(3) identification (by species, gear type, geographic area of operations, and season) of the fisheries in which the fishing vessel participates.

(c) Fishery information

The proposed information management system should, at a minimum, provide basic fisheries performance information for each fishery, including -

- (1) the number of vessels participating in the fishery including charter fishing vessels;
- (2) the time period in which the fishery occurs;
- (3) the approximate geographic location or official reporting area where the fishery occurs;
- (4) a description of fishing gear used in the fishery, including the amount and type of such gear and the appropriate unit of fishing effort; and
- (5) other information required under subsection (FOOTNOTE 1) 1853(a)(5) of this title or requested by the Council under section 1881a of this title.

(FOOTNOTE 1) So in original. Probably should be "section".

(d) Use of registration

Any registration recommended under this section shall not be considered a permit for the purposes of this chapter, and the Secretary may not propose to revoke, suspend, deny, or impose any other conditions or restrictions on any such registration or the use of such registration under this chapter.

(e) Public comment

Within one year after October 11, 1996, the Secretary shall publish in the Federal Register for a 60-day public comment period a proposal that would provide for implementation of a standardized fishing vessel registration and information collection system that meets the requirements of subsections (a) through (c) of this section. The proposal shall include -

- (1) a description of the arrangements of the Secretary for consultation and cooperation with the department in which the Coast Guard is operating, the States, the Councils, Marine Fisheries Commissions, the fishing industry and other interested parties; and
- (2) any proposed regulations or legislation necessary to implement the proposal.

(f) Congressional transmittal

Within 60 days after the end of the comment period and after consideration of comments received under subsection (e) of this section, the Secretary shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a recommended proposal for implementation of a national fishing vessel registration system that includes -

- (1) any modifications made after comment and consultation;
- (2) a proposed implementation schedule, including a schedule

for the proposed cooperative agreements required under subsection (a)(4) of this section; and

(3) recommendations for any such additional legislation as the Secretary considers necessary or desirable to implement the proposed system.

(g) Report to Congress

Within 15 months after October 11, 1996, the Secretary shall report to Congress on the need to include recreational fishing vessels into a national fishing vessel registration and information collection system. In preparing its report, the Secretary shall cooperate with the Secretary of the department in which the Coast Guard is operating, the States, the Councils, and Marine Fisheries Commissions, and consult with governmental and nongovernmental parties.

(Pub. L. 94-265, title IV, Sec. 401, as added Pub. L. 104-297, title II, Sec. 202, Oct. 11, 1996, 110 Stat. 3605.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1) and (d), was in the original "this Act", meaning Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, known as the Magnuson-Stevens Fishery Conservation and Management Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

The Marine Mammal Protection Act, referred to in subsec. (a)(1), probably means the Marine Mammal Protection Act of 1972, Pub. L. 92-522, Oct. 21, 1972, 86 Stat. 1027, as amended, which is classified generally to chapter 31 (Sec. 1361 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1361 of this title and Tables.

PRIOR PROVISIONS

A prior section 1881, Pub. L. 94-265, title IV, Sec. 401, Apr. 13, 1976, 90 Stat. 359, related to authority to amend regulations to conform to Law of the Sea Treaty, prior to repeal by Pub. L. 99-659, title I, Sec. 110, Nov. 14, 1986, 100 Stat. 3715.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1881c of this title.

16 USC Sec. 1881a

01/26/98

TITLE 16 - CONSERVATION

CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT
SUBCHAPTER V - FISHERY MONITORING AND RESEARCH

Sec. 1881a. Information collection

(a) Council requests

If a Council determines that additional information (other than information that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations) would be beneficial for developing, implementing, or revising a fishery management plan or for determining whether a fishery is in need of management, the Council may request that the Secretary implement an information collection program for the fishery which would provide the types of information (other than information that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations) specified by the Council. The Secretary shall undertake such an information collection program if he determines that the need is justified, and shall promulgate regulations to implement the program within 60 days after such determination is made. If the Secretary determines that the need for an information collection program is not justified, the Secretary shall inform the Council of the reasons for such determination in writing. The determinations of the Secretary under this subsection regarding a Council request shall be made within a reasonable period of time after receipt of that request.

(b) Confidentiality of information

(1) Any information submitted to the Secretary by any person in compliance with any requirement under this chapter shall be confidential and shall not be disclosed, except -

(A) to Federal employees and Council employees who are responsible for fishery management plan development and monitoring;

(B) to State or Marine Fisheries Commission employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person;

(C) when required by court order;

(D) when such information is used to verify catch under an individual fishing quota program;

(E) that observer information collected in fisheries under the authority of the North Pacific Council may be released to the public as specified in a fishery management plan or regulation for weekly summary bycatch information identified by vessel, and for haul-specific bycatch information without vessel identification; or

(F) when the Secretary has obtained written authorization from the person submitting such information to release such information to persons for reasons not otherwise provided for in this subsection, and such release does not violate other requirements of this chapter.

(2) The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement or regulation under this chapter, except that the Secretary may release or make public any such information in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any information submitted in compliance with any requirement or regulation under this chapter or the use, release, or publication of bycatch information pursuant to paragraph (1)(E).

(c) Restriction on use of certain information

(1) The Secretary shall promulgate regulations to restrict the use, in civil enforcement or criminal proceedings under this chapter, the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), and the Endangered Species Act (16 U.S.C. 1531 et seq.), of information collected by voluntary fishery data collectors, including sea samplers, while aboard any vessel for conservation and management purposes if the presence of such a fishery data collector aboard is not required by any of such chapter or Acts or regulations thereunder.

(2) The Secretary may not require the submission of a Federal or State income tax return or statement as a prerequisite for issuance of a permit until such time as the Secretary has promulgated regulations to ensure the confidentiality of information contained in such return or statement, to limit the information submitted to that necessary to achieve a demonstrated conservation and management purpose, and to provide appropriate penalties for violation of such regulations.

(d) Contracting authority

Notwithstanding any other provision of law, the Secretary may provide a grant, contract, or other financial assistance on a sole-source basis to a State, Council, or Marine Fisheries Commission for the purpose of carrying out information collection or other programs if -

(1) the recipient of such a grant, contract, or other financial assistance is specified by statute to be, or has customarily been, such State, Council, or Marine Fisheries Commission; or

(2) the Secretary has entered into a cooperative agreement with

such State, Council, or Marine Fisheries Commission.

(e) Resource assessments

(1) The Secretary may use the private sector to provide vessels, equipment, and services necessary to survey the fishery resources of the United States when the arrangement will yield statistically reliable results.

(2) The Secretary, in consultation with the appropriate Council and the fishing industry -

(A) may structure competitive solicitations under paragraph (1) so as to compensate a contractor for a fishery resources survey by allowing the contractor to retain for sale fish harvested during the survey voyage;

(B) in the case of a survey during which the quantity or quality of fish harvested is not expected to be adequately compensatory, may structure those solicitations so as to provide that compensation by permitting the contractor to harvest on a subsequent voyage and retain for sale a portion of the allowable catch of the surveyed fishery; and

(C) may permit fish harvested during such survey to count toward a vessel's catch history under a fishery management plan if such survey was conducted in a manner that precluded a vessel's participation in a fishery that counted under the plan for purposes of determining catch history.

(3) The Secretary shall undertake efforts to expand annual fishery resource assessments in all regions of the Nation.

(Pub. L. 94-265, title IV, Sec. 402, as added Pub. L. 104-297, title II, Sec. 203, Oct. 11, 1996, 110 Stat. 3607.)

REFERENCES IN TEXT

The Marine Mammal Protection Act of 1972, referred to in subsec. (c)(1), is Pub. L. 92-522, Oct. 21, 1972, 86 Stat. 1027, as amended, which is classified generally to chapter 31 (Sec. 1361 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1361 of this title and Tables.

The Endangered Species Act, referred to in subsec. (c)(1), probably means the Endangered Species Act of 1973, Pub. L. 93-205, Dec. 28, 1973, 87 Stat. 884, as amended, which is classified generally to chapter 35 (Sec. 1531 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of this title and Tables.

PRIOR PROVISIONS

A prior section 402 of Pub. L. 94-265 repealed former sections 1081 to 1086 and 1091 to 1094 of this title, prior to being amended

generally by Pub. L. 104-297.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1852, 1855, 1881 of this title.

16 USC Sec. 1881b

01/26/98

TITLE 16 - CONSERVATION

CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT

SUBCHAPTER V - FISHERY MONITORING AND RESEARCH

Sec. 1881b. Observers

(a) Guidelines for carrying observers

Within one year after October 11, 1996, the Secretary shall promulgate regulations, after notice and opportunity for public comment, for fishing vessels that carry observers. The regulations shall include guidelines for determining -

- (1) when a vessel is not required to carry an observer on board because the facilities of such vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; and
- (2) actions which vessel owners or operators may reasonably be required to take to render such facilities adequate and safe.

(b) Training

The Secretary, in cooperation with the appropriate States and the National Sea Grant College Program, shall -

- (1) establish programs to ensure that each observer receives adequate training in collecting and analyzing the information necessary for the conservation and management purposes of the fishery to which such observer is assigned;
- (2) require that an observer demonstrate competence in fisheries science and statistical analysis at a level sufficient to enable such person to fulfill the responsibilities of the position;
- (3) ensure that an observer has received adequate training in basic vessel safety; and
- (4) make use of university and any appropriate private nonprofit organization training facilities and resources, where possible, in carrying out this subsection.

(c) Observer status

An observer on a vessel and under contract to carry out responsibilities under this chapter or the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) shall be deemed to be a

Federal employee for the purpose of compensation under the Federal Employee Compensation Act (5 U.S.C. 8101 et seq.).

(Pub. L. 94-265, title IV, Sec. 403, as added Pub. L. 104-297, title II, Sec. 204, Oct. 11, 1996, 110 Stat. 3609.)

REFERENCES IN TEXT

The Marine Mammal Protection Act of 1972, referred to in subsec. (c), is Pub. L. 92-522, Oct. 21, 1972, 86 Stat. 1027, as amended, which is classified generally to chapter 31 (Sec. 1361 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1361 of this title and Tables.

The Federal Employee Compensation Act, referred to in subsec. (c), is act Sept. 7, 1916, ch. 458, 39 Stat. 742, as amended, which was repealed and the provisions thereof were reenacted as subchapter I (Sec. 8101 et seq.) of chapter 81 of Title 5, Government Organization and Employees, by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378.

PRIOR PROVISIONS

A prior section 403 of Pub. L. 94-265 amended sections 1972 and 1973 of Title 22, Foreign Relations and Intercourse, and enacted provisions formerly set out as notes under sections 1972 and 1973 of Title 22, prior to being amended generally by Pub. L. 104-297.

16 USC Sec. 1881c

01/26/98

TITLE 16 - CONSERVATION

CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT

SUBCHAPTER V - FISHERY MONITORING AND RESEARCH

Sec. 1881c. Fisheries research

(a) In general

The Secretary shall initiate and maintain, in cooperation with the Councils, a comprehensive program of fishery research to carry out and further the purposes, policy, and provisions of this chapter. Such program shall be designed to acquire knowledge and information, including statistics, on fishery conservation and management and on the economics and social characteristics of the fisheries.

(b) Strategic plan

Within one year after October 11, 1996, and at least every 3 years thereafter, the Secretary shall develop and publish in the Federal Register a strategic plan for fisheries research for the 5

years immediately following such publication. The plan shall -

- (1) identify and describe a comprehensive program with a limited number of priority objectives for research in each of the areas specified in subsection (c) of this section;
- (2) indicate goals and timetables for the program described in paragraph (1);
- (3) provide a role for commercial fishermen in such research, including involvement in field testing;
- (4) provide for collection and dissemination, in a timely manner, of complete and accurate information concerning fishing activities, catch, effort, stock assessments, and other research conducted under this section; and
- (5) be developed in cooperation with the Councils and affected States, and provide for coordination with the Councils, affected States, and other research entities.

(c) Areas of research

Areas of research are as follows:

- (1) Research to support fishery conservation and management, including but not limited to, biological research concerning the abundance and life history parameters of stocks of fish, the interdependence of fisheries or stocks of fish, the identification of essential fish habitat, the impact of pollution on fish populations, the impact of wetland and estuarine degradation, and other factors affecting the abundance and availability of fish.
- (2) Conservation engineering research, including the study of fish behavior and the development and testing of new gear technology and fishing techniques to minimize bycatch and any adverse effects on essential fish habitat and promote efficient harvest of target species.
- (3) Research on the fisheries, including the social, cultural, and economic relationships among fishing vessel owners, crew, United States fish processors, associated shoreside labor, seafood markets and fishing communities.
- (4) Information management research, including the development of a fishery information base and an information management system under section 1881 of this title that will permit the full use of information in the support of effective fishery conservation and management.

(d) Public notice

In developing the plan required under subsection (a) of this section, the Secretary shall consult with relevant Federal, State, and international agencies, scientific and technical experts, and other interested persons, public and private, and shall publish a proposed plan in the Federal Register for the purpose of receiving public comment on the plan. The Secretary shall ensure that

affected commercial fishermen are actively involved in the development of the portion of the plan pertaining to conservation engineering research. Upon final publication in the Federal Register, the plan shall be submitted by the Secretary to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives.

(Pub. L. 94-265, title IV, Sec. 404, as added Pub. L. 104-297, title II, Sec. 205, Oct. 11, 1996, 110 Stat. 3609.)

PRIOR PROVISIONS

A prior section 404 of Pub. L. 94-265, amended section 1362 of this title and enacted provisions formerly set out as a note under section 1362 of this title, prior to being amended generally by Pub. L. 104-297.

STUDY OF CONTRIBUTION OF BYCATCH TO CHARITABLE ORGANIZATIONS

Section 208 of Pub. L. 104-297, as amended by Pub. L. 104-208, div. A, title I, Sec. 101(a) (title II, Sec. 211(b)), Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that:

"(a) Study. - The Secretary of Commerce shall conduct a study of the contribution of bycatch to charitable organizations by commercial fishermen. The study shall include determinations of -

"(1) the amount of bycatch that is contributed each year to charitable organizations by commercial fishermen;

"(2) the economic benefits to commercial fishermen from those contributions; and

"(3) the impact on fisheries of the availability of those benefits.

"(b) Report. - Not later than 1 year after the date of enactment of this Act (Oct. 11, 1996), the Secretary of Commerce shall submit to the Congress a report containing determinations made in the study under subsection (a).

"(c) Bycatch Defined. - In this section the term 'bycatch' has the meaning given that term in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802), as amended by section 102 of this Act."

16 USC Sec. 1881d

01/26/98

TITLE 16 - CONSERVATION CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT SUBCHAPTER V - FISHERY MONITORING AND RESEARCH

Sec. 1881d. Incidental harvest research

(a) Collection of information

Within nine months after October 11, 1996, the Secretary shall, after consultation with the Gulf Council and South Atlantic Council, conclude the collection of information in the program to assess the impact on fishery resources of incidental harvest by the shrimp trawl fishery within the authority of such Councils. Within the same time period, the Secretary shall make available to the public aggregated summaries of information collected prior to June 30, 1994 under such program.

(b) Identification of stock

The program concluded pursuant to subsection (a) of this section shall provide for the identification of stocks of fish which are subject to significant incidental harvest in the course of normal shrimp trawl fishing activity.

(c) Collection and assessment of specific stock information

For stocks of fish identified pursuant to subsection (b) of this section, with priority given to stocks which (based upon the best available scientific information) are considered to be overfished, the Secretary shall conduct -

(1) a program to collect and evaluate information on the nature and extent (including the spatial and temporal distribution) of incidental mortality of such stocks as a direct result of shrimp trawl fishing activities;

(2) an assessment of the status and condition of such stocks, including collection of information which would allow the estimation of life history parameters with sufficient accuracy and precision to support sound scientific evaluation of the effects of various management alternatives on the status of such stocks; and

(3) a program of information collection and evaluation for such stocks on the magnitude and distribution of fishing mortality and fishing effort by sources of fishing mortality other than shrimp trawl fishing activity.

(d) Bycatch reduction program

Not later than 12 months after October 11, 1996, the Secretary shall, in cooperation with affected interests, and based upon the best scientific information available, complete a program to -

(1) develop technological devices and other changes in fishing operations necessary and appropriate to minimize the incidental mortality of bycatch in the course of shrimp trawl activity to the extent practicable, taking into account the level of bycatch mortality in the fishery on November 28, 1990;

(2) evaluate the ecological impacts and the benefits and costs of such devices and changes in fishing operations; and

(3) assess whether it is practicable to utilize bycatch which is not avoidable.

(e) Report to Congress

The Secretary shall, within one year of completing the programs required by this section, submit a detailed report on the results of such programs to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives.

(f) Implementation criteria

To the extent practicable, any conservation and management measure implemented under this chapter to reduce the incidental mortality of bycatch in the course of shrimp trawl fishing shall be consistent with -

- (1) measures applicable to fishing throughout the range in United States waters of the bycatch species concerned; and
- (2) the need to avoid any serious adverse environmental impacts on such bycatch species or the ecology of the affected area.

(Pub. L. 94-265, title IV, Sec. 405, as added Pub. L. 104-297, title II, Sec. 206, Oct. 11, 1996, 110 Stat. 3611.)

PRIOR PROVISIONS

A prior section 405 of Pub. L. 94-265, amended section 971 of this title and enacted provisions formerly set out as a note under section 971 of this title, prior to being amended generally by Pub. L. 104-297.

16 USC Sec. 1882

01/26/98

TITLE 16 - CONSERVATION
CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT
SUBCHAPTER V - FISHERY MONITORING AND RESEARCH

Sec. 1882. Fisheries systems research

(a) Establishment of panel

Not later than 180 days after October 11, 1996, the Secretary shall establish an advisory panel under this chapter to develop recommendations to expand the application of ecosystem principles in fishery conservation and management activities.

(b) Panel membership

The advisory panel shall consist of not more than 20 individuals and include -

- (1) individuals with expertise in the structures, functions, and physical and biological characteristics of ecosystems; and
- (2) representatives from the Councils, States, fishing industry, conservation organizations, or others with expertise in the management of marine resources.

(c) Recommendations

Prior to selecting advisory panel members, the Secretary shall, with respect to panel members described in subsection (b)(1) of this section, solicit recommendations from the National Academy of Sciences.

(d) Report

Within 2 years after October 11, 1996, the Secretary shall submit to the Congress a completed report of the panel established under this section, which shall include -

- (1) an analysis of the extent to which ecosystem principles are being applied in fishery conservation and management activities, including research activities;
- (2) proposed actions by the Secretary and by the Congress that should be undertaken to expand the application of ecosystem principles in fishery conservation and management; and
- (3) such other information as may be appropriate.

(e) Procedural matter

The advisory panel established under this section shall be deemed an advisory panel under section 1852(g) of this title.

(Pub. L. 94-265, title IV, Sec. 406, Apr. 13, 1976, 90 Stat. 361; Pub. L. 95-354, Sec. 1, Aug. 28, 1978, 92 Stat. 519; Pub. L. 96-61, Sec. 1, Aug. 15, 1979, 93 Stat. 407; Pub. L. 97-453, Sec. 14(a), Jan. 12, 1983, 96 Stat. 2492; Pub. L. 99-659, title I, Sec. 111(a), Nov. 14, 1986, 100 Stat. 3715; Pub. L. 101-627, title I, Sec. 119, Nov. 28, 1990, 104 Stat. 4459; Pub. L. 104-297, title II, Sec. 207(a), Oct. 11, 1996, 110 Stat. 3612.)

CODIFICATION

October 11, 1996, referred to in subsec. (d), was in the original "the date of enactment of this Act", which was translated as meaning the date of enactment of Pub. L. 104-297, which amended this section generally, to reflect the probable intent of Congress.

AMENDMENTS

1996 - Pub. L. 104-297 amended section catchline and text generally. Prior to amendment, section authorized appropriations to carry out this chapter for fiscal year ending June 30, 1976 to fiscal year ending September 30, 1993.

1990 - Pars. (16) to (19). Pub. L. 101-627 added pars. (16) to (19).

1986 - Pars. (12) to (15). Pub. L. 99-659 added pars. (12) to (15).

1983 - Pars. (9) to (11). Pub. L. 97-453 added pars. (9) to (11).

1979 - Pars. (6) to (8). Pub. L. 96-61 added pars. (6) to (8).

1978 - Par. (5). Pub. L. 95-354 added par. (5).

TITLE 16 - CONSERVATION
CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT
SUBCHAPTER V - FISHERY MONITORING AND RESEARCH

Sec. 1883. Gulf of Mexico red snapper research

(a) Independent peer review

(1) Within 30 days of October 11, 1996, the Secretary shall initiate an independent peer review to evaluate -

(A) the accuracy and adequacy of fishery statistics used by the Secretary for the red snapper fishery in the Gulf of Mexico to account for all commercial, recreational, and charter fishing harvests and fishing effort on the stock;

(B) the appropriateness of the scientific methods, information, and models used by the Secretary to assess the status and trends of the Gulf of Mexico red snapper stock and as the basis for the fishery management plan for the Gulf of Mexico red snapper fishery;

(C) the appropriateness and adequacy of the management measures in the fishery management plan for red snapper in the Gulf of Mexico for conserving and managing the red snapper fishery under this chapter; and

(D) the costs and benefits of all reasonable alternatives to an individual fishing quota program for the red snapper fishery in the Gulf of Mexico.

(2) The Secretary shall ensure that commercial, recreational, and charter fishermen in the red snapper fishery in the Gulf of Mexico are provided an opportunity to -

(A) participate in the peer review under this subsection; and

(B) provide information to the Secretary concerning the review of fishery statistics under this subsection without being subject to penalty under this chapter or other applicable law for any past violation of a requirement to report such information to the Secretary.

(3) The Secretary shall submit a detailed written report on the findings of the peer review conducted under this subsection to the Gulf Council no later than one year after October 11, 1996.

(b) Prohibition

In addition to the restrictions under section 1853(d)(1)(A) of this title, the Gulf Council may not, prior to October 1, 2000, undertake or continue the preparation of any fishery management plan, plan amendment or regulation under this chapter for the Gulf of Mexico commercial red snapper fishery that creates an individual fishing quota program or that authorizes the consolidation of

licenses, permits, or endorsements that result in different trip limits for vessels in the same class.

(c) Referendum

(1) On or after October 1, 2000, the Gulf Council may prepare and submit a fishery management plan, plan amendment, or regulation for the Gulf of Mexico commercial red snapper fishery that creates an individual fishing quota program or that authorizes the consolidation of licenses, permits, or endorsements that result in different trip limits for vessels in the same class, only if the preparation of such plan, amendment, or regulation is approved in a referendum conducted under paragraph (2) and only if the submission to the Secretary of such plan, amendment, or regulation is approved in a subsequent referendum conducted under paragraph (2).

(2) The Secretary, at the request of the Gulf Council, shall conduct referendums under this subsection. Only a person who held an annual vessel permit with a red snapper endorsement for such permit on September 1, 1996 (or any person to whom such permit with such endorsement was transferred after such date) and vessel captains who harvested red snapper in a commercial fishery using such endorsement in each red snapper fishing season occurring between January 1, 1993, and such date may vote in a referendum under this subsection. The referendum shall be decided by a majority of the votes cast. The Secretary shall develop a formula to weigh votes based on the proportional harvest under each such permit and endorsement and by each such captain in the fishery between January 1, 1993, and September 1, 1996. Prior to each referendum, the Secretary, in consultation with the Council, shall

-

(A) identify and notify all such persons holding permits with red snapper endorsements and all such vessel captains; and

(B) make available to all such persons and vessel captains information about the schedule, procedures, and eligibility requirements for the referendum and the proposed individual fishing quota program.

(d) Catch limits

Any fishery management plan, plan amendment, or regulation submitted by the Gulf Council for the red snapper fishery after October 11, 1996, shall contain conservation and management measures that -

(1) establish separate quotas for recreational fishing (which, for the purposes of this subsection shall include charter fishing) and commercial fishing that, when reached, result in a prohibition on the retention of fish caught during recreational fishing and commercial fishing, respectively, for the remainder of the fishing year; and

(2) ensure that such quotas reflect allocations among such

sectors and do not reflect any harvests in excess of such allocations.

(Pub. L. 94-265, title IV, Sec. 407, as added Pub. L. 104-297, title II, Sec. 207(b), Oct. 11, 1996, 110 Stat. 3612.)