

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 08/13/2010

Department of Commerce
National Oceanic and Atmospheric Administration
FOR CERTIFYING OFFICIAL: Simon Szykman
FOR CLEARANCE OFFICER: Diana Hynek

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 04/19/2010

ACTION REQUESTED: Extension without change of a currently approved collection
TYPE OF REVIEW REQUESTED: Regular
ICR REFERENCE NUMBER: 201003-0648-005
AGENCY ICR TRACKING NUMBER:
TITLE: Northeast Region Dealer Purchase Reports
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change
OMB CONTROL NUMBER: 0648-0229

The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 08/31/2013

DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	40,362	2,722	460,200
New	37,752	2,517	443,172
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	0	0	0
Change due to Agency Adjustment	-2,610	-205	-17,028
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official: Kevin F. Neyland
Deputy Administrator,
Office Of Information And Regulatory Affairs

List of ICs

IC Title	Form No.	Form Name	CFR Citation
Northeast Region Dealer Purchase Reports INCLUDING hagfish and lobster dealers	NA	SAFIS dealer trip ticket reporting	

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

<p>1. Agency/Subagency originating request</p>	<p>2. OMB control number b. <input type="checkbox"/> None a. _____ - _____</p>
<p>3. Type of information collection (<i>check one</i>)</p> <p>a. <input type="checkbox"/> New Collection</p> <p>b. <input type="checkbox"/> Revision of a currently approved collection</p> <p>c. <input type="checkbox"/> Extension of a currently approved collection</p> <p>d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired</p> <p>e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired</p> <p>f. <input type="checkbox"/> Existing collection in use without an OMB control number</p> <p>For b-f, note Item A2 of Supporting Statement instructions</p>	<p>4. Type of review requested (<i>check one</i>)</p> <p>a. <input type="checkbox"/> Regular submission</p> <p>b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____</p> <p>c. <input type="checkbox"/> Delegated</p>
	<p>5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
	<p>6. Requested expiration date</p> <p>a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____</p>
<p>7. Title</p>	
<p>8. Agency form number(s) (<i>if applicable</i>)</p>	
<p>9. Keywords</p>	
<p>10. Abstract</p>	
<p>11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>)</p> <p>a. <input type="checkbox"/> Individuals or households d. <input type="checkbox"/> Farms</p> <p>b. <input type="checkbox"/> Business or other for-profit e. <input type="checkbox"/> Federal Government</p> <p>c. <input type="checkbox"/> Not-for-profit institutions f. <input type="checkbox"/> State, Local or Tribal Government</p>	<p>12. Obligation to respond (<i>check one</i>)</p> <p>a. <input type="checkbox"/> Voluntary</p> <p>b. <input type="checkbox"/> Required to obtain or retain benefits</p> <p>c. <input type="checkbox"/> Mandatory</p>
<p>13. Annual recordkeeping and reporting burden</p> <p>a. Number of respondents _____</p> <p>b. Total annual responses _____</p> <p> 1. Percentage of these responses collected electronically _____ %</p> <p>c. Total annual hours requested _____</p> <p>d. Current OMB inventory _____</p> <p>e. Difference _____</p> <p>f. Explanation of difference</p> <p> 1. Program change _____</p> <p> 2. Adjustment _____</p>	<p>14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>)</p> <p>a. Total annualized capital/startup costs _____</p> <p>b. Total annual costs (O&M) _____</p> <p>c. Total annualized cost requested _____</p> <p>d. Current OMB inventory _____</p> <p>e. Difference _____</p> <p>f. Explanation of difference</p> <p> 1. Program change _____</p> <p> 2. Adjustment _____</p>
<p>15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>)</p> <p>a. <input type="checkbox"/> Application for benefits e. <input type="checkbox"/> Program planning or management</p> <p>b. <input type="checkbox"/> Program evaluation f. <input type="checkbox"/> Research</p> <p>c. <input type="checkbox"/> General purpose statistics g. <input type="checkbox"/> Regulatory or compliance</p> <p>d. <input type="checkbox"/> Audit</p>	<p>16. Frequency of recordkeeping or reporting (<i>check all that apply</i>)</p> <p>a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure</p> <p>c. <input type="checkbox"/> Reporting</p> <p> 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly</p> <p> 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually</p> <p> 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____</p>
<p>17. Statistical methods</p> <p>Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>18. Agency Contact (person who can best answer questions regarding the content of this submission)</p> <p>Name: _____</p> <p>Phone: _____</p>

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING STATEMENT
NORTHEAST REGION DEALER PURCHASE REPORTS
OMB CONTROL NO.: 0648-0229**

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

The National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) is responsible for the stewardship of the Nation's living marine resources and their habitats within the United States Exclusive Economic Zone (EEZ). NMFS works to conserve, protect, and manage these resources to ensure their continuation as functioning components of ecosystems, while also affording economic opportunities and enhancing the quality of life for the American public. Our mandates and authorities are derived from numerous statutes, most significantly the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Endangered Species Act (ESA), and the Marine Mammal Protection Act (MMPA).

Under the MSA – initially implemented in 1976, amended in 1996 with the passage of the Sustainable Fisheries Act and most recently amended in 2006 by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act – the Secretary of Commerce (Secretary) has the responsibility for conservation and management of the nation's marine fishery resources. Much of this responsibility has been delegated to NMFS. Under this stewardship role, the Secretary is authorized to adopt such regulations as may be necessary to create sustainable fisheries by eliminating over fishing while achieving, on a continuing basis, the optimum yield from each fishery.

One of the regulatory steps taken to ensure that these measures are based on the best available scientific information is the collection of data from the users of the resource. Thus, as Regional Fishery Management Councils develop specific Fishery Management Plans (FMP), the Secretary has set forth rules for the collection of fishery-dependent data from dealers/processors and vessels in order to monitor, evaluate and enforce the fishery regulations intended to achieve sustainable fisheries. The continuing need for this information is explicit in the management goals and objectives established by the Mid-Atlantic Fisheries Management Council (MAFMC) and the New England Fisheries Management Council (NEFMC) as well as in the Magnuson-Stevens Act, the Sustainable Fisheries Act and NMFS Strategic Plan.

In an effort to achieve the goals of the MSA, several fisheries are now being managed by harvest limits including quotas, annual target total allowable catches (TAC) and domestic annual harvest (DAH) limits. These fisheries often have short fishing seasons and require in-season management measures, such as closures and trip limits, to ensure that harvest levels established in each FMP are not exceeded. Therefore, as more fisheries are being managed by harvest limits, the timely collection of data from dealers and vessel owners and operators is and will continue to be a necessary component of most management regimes, as evidenced in several FMPs.

All federal permitted dealers of Atlantic mackerel, squid, butterfish, Atlantic sea scallop, Atlantic surfclam, ocean quahog, Northeast (NE) multispecies, monkfish, summer flounder,

scup, black sea bass, Atlantic bluefish, spiny dogfish, Atlantic herring, skates, tilefish, hagfish, American lobster must have been issued and have in their possession a federal dealer permit in order to purchase such species from fishing vessels. Federall permitted dealers in the above fisheries are required to submit certain information regarding their fish purchases to NMFS. Trip-level (trip by trip) reports provide the comprehensive data that are necessary for successful long-term management of each fishery.

Section 303(a)(5) of the MSA specifically identifies the kinds of data to be collected for FMPs. Comprehensive trip-level reports submitted by dealers include individual vessel information, purchases by species and market category, and pricing information. The use of approved electronic submission processes to collect the information is an essential ingredient in the management of fishery resources because they provide an efficient means to collect that information on which management decisions are made.

In all fisheries requiring mandatory reporting, 'negative reporting' by dealers is required if no fish was purchased during the reporting period. Negative reports are necessary in order to accurately identify dealers who have not purchased fish as opposed to those who have failed to report their purchases

All large vessel at-sea processors of Atlantic mackerel that have been issued and have in their possession a federal at-sea processor permit may purchase mackerel from fishing vessels at sea for processing provided the large vessel did not harvest the mackerel. These Federall permitted vessels are also required to submit certain information regarding their fish purchases to NMFS.

NOAA is requesting an extension of this information collection.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

Almost every international, federal, state, and local fishery management authority recognizes the value of fisheries' statistics collections and uses them as part of their management systems. Fisheries statistics are used by economists, biologists, and managers to develop, monitor, and enforce controls on fishery harvests.

The information collected is used by several offices of NMFS, the NEFMC, the MAFMC and the Atlantic States Marine Fisheries Commission (ASMFC) to monitor quota-managed species, ensuring that conservation and management actions may be taken in a timely manner. Accurate and timely landings reports are especially important for monitoring commercial landings by species and evaluating the effectiveness of each FMP in achieving its fishing mortality targets.

In addition to the uses specifically relating to management of individual species, the statistics collected through these reports will be incorporated into the NMFS databases which are used in many analyses by various offices of NMFS, the Regional Fishery Management Councils, the United States Coast Guard (USCG), state fishery enforcement agencies, the Departments of State and Commerce, Office of Management and Budget (OMB), the Corps of Engineers,

Congressional staffs, the fishing industry, and the public. The data also serve as inputs to a variety of uses such as biological analyses and stock assessments, and in support of Executive Order (E.O.) 12866 “Regulatory Planning and Review”, quota and allocation selections and monitoring, economic profitability profiles, trade and import tariff decisions, allocation of grant funds among states, and identification of ecological interactions among species. Data used are also utilized for monitoring and evaluating ESA and MMPA actions.

Purchases from Fishing Vessels - Northeast

Purchases from fishing vessels are submitted by dealers.

Vessel-based information required under the mandatory program includes a dealer name, location and permit number, vessel name and permit number, or USCG or state registration number in lieu of the federal permit number, trip identifier, along with port and state landed. This information is necessary to the accounting systems used by the dealers and is part of the dealer’s own record-keeping requirements. Vessel name and permit number are used to identify the respondent and the legal entity (owners) controlling the fishing practices of the vessel. Vessel fishing permit information is used by National Oceanic and Atmospheric Administration’s (NOAA) Office of Law Enforcement (OLE) to determine violations of quota and reporting regulations. Violations may result in fines, suspension of a fishing permit, or seizure of the catch. Since many vessels are owned by individuals or by corporations, identification and location of the company purchasing the product and the identification of the vessel from which the product was purchased are necessary to enforce fishery regulations.

Dealers utilizing their surfclam or ocean quahog permit are required to report cage tag numbers when purchasing those species from vessel fishing under an Individual Transferable Quota (ITQ). Cage tag numbers are used to verify landings and monitor compliance in the surfclam and ocean quahog fisheries, which are managed using an ITQ system.

All of this information is needed in order to process the data, and to match each dealer report with the corresponding fishing vessel logbooks (OMB Control No. 0648-0212) submitted by the vessel owners, using these fields as the identifiers. Coordinating the data submitted by vessels and dealers is necessary for monitoring compliance by both parties and for providing verification of reporting. In addition, linking the two data sets allows for the allocation of effort and location data from the vessel logbooks to the corresponding dealer reports which contain the economic data, thus providing a complete representation of the industry. Information regarding the state where landed is used to assign landings to the appropriate state when the data are compiled by NMFS. This is especially important in fisheries where the FMP is based on coast-wide quotas allocated by state, such as summer flounder.

Species purchased, unit of measure, amount, and value, by species, grade, market category, and disposition code is collected under the mandatory reporting program. The pounds purchased, in combination with the species, are used by NMFS to determine current harvest rates for each fishery on a real-time basis. When certain trigger points are reached, depending on the fishery, NMFS will be able to establish or change a trip limit or close a fishery, as appropriate, in order to meet the regulatory requirements set forth under each FMP. Species information, such as landings by species and market (size) category, is the basic measure of fishing success from

which fishermen, biologists, and economists draw conclusions about the status of the fishery. Species landing information is needed because controlling the quantity of fish harvested is often the means for ensuring continued harvests over time. The unit of measure identifies how the specie is landed, i.e. bushels versus poundage versus individuals. This identifies which conversion factors to use in determining the overall weight in pounds of the landing. Grade categories establish the correct conversion factor back to whole fish weight to accurately determine the amount of fish landed. The market categories are also for the convenience of the dealer because price is size-dependent and the catch is usually culled and sold by market category.

Disposition of seafood products is needed to determine the ultimate fate and use of harvested fish and shellfish. Price and value are used in estimating the earnings and profitability of each fishing trip by the vessel operator and in regulatory impact reviews and economic input-output models requiring such data to estimate the economic effects of changes induced by the biology or management of the fishery. Special economic studies are conducted to obtain detailed information on specific issues or fisheries when resources are available. It should be noted that both species and price information are necessary for the dealer's own accounting operation; therefore, reporting that information does not constitute an additional reporting burden.

Dealer e-mail addresses are being requested on a voluntary basis to allow for confirmation notices to be sent by NMFS when a report has been submitted. The collection of dealer e-mail addresses can also allow for electronic dissemination of information from NMFS Service to industry.

It is anticipated that the information collected will be disseminated to the public or used to support publicly disseminated information, subject to the data confidentiality provisions of the MSA. As explained in the previous paragraphs, the information gathered has utility. NMFS will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response to Question 10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior to dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to Section 515 of Public Law 106-554.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

Federall permitted dealers are required to submit detailed reports of all purchases from fishing vessels electronically. To accommodate the varying extent to which dealers use computer applications, dealers can choose how they will submit purchase reports electronically. The options include an online data entry form available at <http://www.accsp.org/safis.htm>, an offline data entry form (fillable and printable), and an acceptable file upload report system implemented by NMFS Service, or by one or more state fishery management agencies.

Due to the required confidentiality of fish purchase reports, information sent from dealers to NMFS is subject to strict encryption standards and is available only to authorized agency personnel and the submitter. Dealers receive a user name and personal identification number (PIN) that enables them to log onto a secure site and submit their reports. Dealers are also allowed to access, review, and edit the information they have submitted using a secure procedure similar to those in common usage throughout the banking industry. These submissions constitute the official reports as required by the various FMPs in the Northeast.

4. Describe efforts to identify duplication.

Operational Guidelines on the FMP Process require that each FMP evaluate existing state and Federal laws that govern the fisheries in question, and the findings are made part of each FMP. Each Fishery Management Council membership comprises state and federal officials responsible for resource management in their state or area. Bringing fisheries managers together for the review of existing state or Federal laws helps to identify other collections that may be gathering the same or similar information. If a state is collecting the required information under its own authority and can provide the data, generally NMFS will use the state's data rather than duplicate state collections. In addition, each FMP undergoes extensive public comment periods where potential participants in the fishery to be managed review the proposed permit application requirements and data collection proposals. Therefore, NMFS is confident it is aware of similar collections if they exist and has avoided duplication to the extent possible.

The exception to duplicate data collection by state and Federal authorities is for certain quota-managed species, including summer flounder, scup, black sea bass and Atlantic bluefish, among others. Landings for these species are also collected by the states in some cases because they are managed by a state-allocated quota system as well as by a Federal one. Monitoring the quotas in a timely manner is critical for effective management and so some, but not all, states have implemented their own weekly reporting system. Because landings of these species need to be monitored for each state in the NE Region, Federal law requires reporting of all purchases made by federally permitted dealers.

The dealer report submitted by dealers and processors in the Atlantic mackerel, squid, butterfish, Atlantic sea scallop, Atlantic surf clam, ocean quahog, NE multispecies, monkfish, summer flounder, scup, black sea bass, Atlantic bluefish, spiny dogfish, Atlantic herring, Atlantic deep-sea red crab, skate, tilefish, hagfish or American Lobster fisheries duplicates, for the purpose of verification and accuracy, some of the information provided by vessel operators on the Fishing Vessel Trip Report (Form 88-30 or its equivalent) and Shellfish Trip Report Form (Form 88-140) in OMB Control No. 0648-0212. In this case certain duplication is desirable to track harvesting, to identify possible reporting violations, and to ensure fairness in application of the measures among the entire group of allocation holders.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

Because all of the dealers who will respond are considered small businesses, separate requirements based on the size of business have not been developed. The dealer electronic reporting system was developed and tested in conjunction with industry members to ensure a

system that is functional and useable for their business purposes. The system accommodates, to the extent possible, existing business software application systems that are being used by dealers. The system allows dealers who currently use such applications to upload a data file from their business application to NMFS, minimizing any additional reporting burden. Dealers who choose to keypunch their data directly into the web-based data entry system will be able to use those reports for their own business records, replacing Form 88-30 or its equivalent which many dealers had used as their official transaction record.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

The dealer purchase reports provide the only source of first-purchase information by dealers involved in these federally managed species. The reports provide critical information on the prices paid for products, the types of products being landed, and the number of dealers involved in the fisheries. If this collection were not conducted, NMFS would be unable to meet its statutory requirements under the MSA, and the fisheries in the NE could not be managed effectively, potentially resulting in irrevocable damage to a public resource.

Timely reporting is critical for monitoring fisheries managed by quotas or other harvest limits. This is especially true in fisheries with small or seasonal quotas where in-season management actions, such as closures or implementation of or changes to trip limits must be taken in a timely manner. NMFS is able to effectively monitor the quota-managed species on a weekly basis.

Reporting of null reports by dealers who do not make any purchases during the reporting week allows NMFS to verify compliance, identify non-reporters, and to take the appropriate action in a timely manner without placing an undue burden on the respondents.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

The data collection is consistent with 5 CFR 1320.6 guidelines except that it requires information to be reported more frequently than quarterly. The need for this is described in Question 6.

8. Provide information on the PRA Federal Register Notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

A Federal Register Notice published on October 20, 2009 (74 FR 53699) solicited public comments on this renewal. There were no comments received.

Since the initial implementation of mandatory electronic reporting for seafood dealers on May 01, 2004, NMFS has continued to work with industry to solicit comments and feedback to ensure the process meets their needs, and continues to modify the reporting systems based on this feedback.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

Not applicable.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

As stated on the forms, all data will be kept confidential as required by section 402(b) of the MSA, and will not be released for public use except in aggregate statistical form, without identification as to its source. Logbooks are considered confidential under the Trade Secrets Act as well.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

No sensitive questions are asked.

12. Provide an estimate in hours of the burden of the collection of information.

Table 1.

Calculation of Public and Federal Cost and Burden Estimates						
	No. of Respondents	Responses per Year	Total Annual Responses	Avg. Response Time (Hrs)	Total Response Hours	Annual Labor Cost to Public
Mandatory Weekly Reporting	726	52	37,752	4 mins.	2,517	\$49, 521

Dealers required to complete and submit Electronic Dealer Purchase Reports include those permitted in the Atlantic mackerel, squid, butterfish, Atlantic sea scallop, NE multispecies, monkfish, summer flounder, scup, black sea bass, Atlantic bluefish, spiny dogfish, Atlantic herring, Atlantic deep-sea red crab, tilefish, skate, Atlantic surfclam and/or ocean quahog fishery, hagfish and American lobster. According to data available through the NE Region Permit database, approximately 726 dealers are permitted for one or more of the fisheries with mandatory electronic reporting requirements.

As indicated in Table 1, the total annual reporting burden associated with this collection is estimated at 2,517 hours. This burden assumes an average response time of 4 minutes to submit electronic data files. The only additional time resulting from this collection is the time required

to log in and transfer their existing data file. Dealers opting to enter data online may use the online system for their own business practices and to generate standard business reports. Therefore, the reporting burden reflects only the time needed to gather any additional information needed to complete the reports and to submit the data file or forms to NMFS. In addition, it is anticipated that several of the reports submitted will be negative reports and will take less time to complete or transfer. The reporting costs to the public are based on a respondent wage of \$18.88/burden hour.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in Question 12 above).

Table 2. Calculation of Annual Cost to Respondents Excluding Respondent Time

	Respondents	Start-up and Operating Costs per Respondent (Internet Access)	Total cost
New dealers	148 (per RIN 0648-AV77)	116 + 652 = 768	113,664
Annuitized dealers	452	77 + 652 = 729	329,508
Totals	600		443,172

For those respondents not already accessing the Internet for other reasons/requirements, operating costs consist of Internet access available through either dial up or cable modem, with an average annual cost for Internet access of \$652. Based on the average annual startup and operating costs per respondent of \$116 and \$652 respectively for the 148 new dealers, total costs are \$768. The 452 annuitized dealers will have a startup cost of \$77 and \$652 respectively for a \$729 total. Total annualized costs for 600 dealers: \$443, 172. For the approximately 126 respondents already accessing the Internet for other reasons, there is no recordkeeping/reporting cost.

Respondents are required to retain copies of their reports for a period of three years after the date of the report for purposes of enforcement investigations, and to serve as the official records for establishing individual vessel allocations. Enforcement investigations may take up to three years before agents interview the respondents. Retention of a copy of the records submitted removes the possible excuse for non-reporting that the original was delivered to but not received by NMFS. Business records are normally retained for three years and many respondents use these reports for that purpose, thus there is no impact on the public burden or cost by this requirement.

14. Provide estimates of annualized cost to the Federal government.

Government Maintenance Costs	
Labor	Non - Labor
\$309,259	\$32,813
\$342,072	

The costs to the Government incurred as a result of this action are maintenance costs that would be associated with personnel who currently manage the automated data-collection program. Labor costs include personnel who would still be utilized on the dealer reporting process after system implementation although their job functions would change to maintenance, troubleshooting, auditing and assistance providing mode. Limited system support and assistance for dealers is also provided by NMFS. Technical experts may accompany field staff, to the extent possible, on visits to industry and port offices for system troubleshooting and maintenance. Non-labor maintenance costs include expenses incurred for system upgrades, computer equipment, and printing of forms.

15. Explain the reasons for any program changes or adjustments.

Adjustments: There are currently an average of 55 fewer dealers estimated to respond per year, and 2,610 fewer responses. The hourly burden is reduced by 205; the initial calculated difference was only 79 hours, but we have adjusted the time per response: previously calculated using 0.07 hours, now using 4 minutes (actual time is 4 minutes, and decimal equivalent was less accurate). The cost has actually not changed; the amount of \$460,200 previously recorded in ROCIS was in error.

NOTE: In ROCIS, removal of the hagfish and lobster dealer ICs resulted in apparent burden change due to agency discretion. This is not a program change; there was just no longer a reason to have the lobster and hagfish separate - they were each added on as new ICs as revisions were done. The decreases in hours of 546 and in costs of \$115,200 were actually part of the net adjustment decreases.

16. For collections whose results will be published, outline the plans for tabulation and publication.

Results from these collections may be used in scientific, management, technical, or general informational publications such as Fisheries of the United States (FUS) and in Status of the Fishery Resources (SFR) off the Northeastern United States, which follow prescribed statistical tabulations and summary table formats. The time schedule for publication of FUS is June of the year following collection. Publication of SFR has usually been in September. Data are available to the general public on request in summary form only and to NMFS Service employees in detailed form on a need-to-know basis only. Aggregate landings and economic data are available on NMFS web pages as well.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

Because this collection involves electronic reports, there is no form on which to display an expiration date. However, an expiration date will be displayed in the instructions or cover letter that will be mailed to each permit holder who is required to report purchases through the electronic system.

18. Explain each exception to the certification statement.

No exceptions are requested.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.



SAFIS
Username
FEDUSER1
Password

- Go
- Enter
- Save
- Edit
- Delete
- Complete
- View
- Favorites
- Reports
- Home
- Sys Admin

- Contact Log
- File Upload
- Exit SAFIS

Welcome to the Standard Atlantic Fisheries Information System - SAFIS

04/13/2005
 State Msg
 Federal Msg

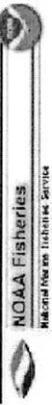
Message from Allison: SAFIS will be rebooted at 3PM today, Wednesday April 13. It should be back up within 10 minutes. Also: the new version of SAFIS 1.4 (implemented 4/6/05) encourages more accurate fisherman data to be entered by dealers. In doing so, users may still enter 'UNKNOWN' fishermen, however any fishermen with a name = UNKNOWN will no longer be included as a frequent fisherman. This will impact existing frequent fisherman lists. Lists of fishermen are updated regularly, however if you



The National Marine Fisheries Service requires this information for the conservation and management of marine fishery resources in accordance with the Magnuson-Stevens Fishery Conservation and Management Act. The data reported will be used to develop, implement, and monitor fishery management strategies and for a variety of other uses. Submission is mandatory for those persons falling under the requirements of 50 CFR 648.7 (a). All data submitted will be handled as Confidential material in accordance with NOAA Administrative Orders. Public reporting burden for this survey is estimated to average 2 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to PRA 0648-0228, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

- SAFIS Help
- About SAFIS
- Web Pages
- Functions



Please enter your username and password then click GO to enable all functions
GOOD MORNING FED FISHERIES

Record: 1/1

Mozilla Firefox all-60.zip

Atomic Clock Sync

Chapara Settings

Paint Shop Pro EasySync Pro 7 (2)

39.jpg

FM605.zip

New Ticket Find Ticket Pay Fisherman Fishing License / Vessel Info Send Data Dealer Info Species Backup via Internet Exit

Selected DB: C:\Program Files\FedTripTicket\TripTick.Mdb

Trip Ticket System For Federally Licensed Dealers

Summary By Species

Report Type: Select A Species: Species Code Species Description

PRINT ALL SPECIES

Shrimp (All Species) Shrimp Count Report

Date Range: Begin Date: / / End Date: / /

Previous: Day Week Month Today

Criteria: Dealer Code: []

Exclude Packout Items Packout Only Totals Only

Paid Owed

Report Options: Summary Info Only All Transactions Insert Page Breaks

Print Options: Print To Screen Print Directly To Printer

Clear Print Close

Entering Negative Reports For: NY TEST

How would you like to enter reports?

SINGLE DAY

Single Day: 05/17/2005

Up
Down

Save Negative Reports

RANGE

Exit

Date of Negative Report

Explanation/Description

Confirmation Number

Date of Negative Report	Explanation/Description	Confirmation Number

Single Date, format MMDDYYYY, to enter a Negative Report.

Record: 1/1

Entering Negative Reports For: NY TEST

How would you like to enter reports?

SINGLE DAY

RANGE

From Date:

05/17/2005

To Date:

05/31/2005

Save Negative Reports

Exit

Date of Negative Report

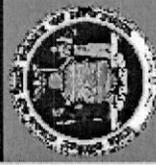
Explanation/Description

Confirmation Number

Date of Negative Report	Explanation/Description	Confirmation Number

From Date, format MM/DD/YYYY, to enter a Negative Report for a range of dates.

Record: 1/1



SAFIS

Username

NYTEST

Password

Go

Enter

Save

Edit

Delete

Complete

View

Favorites

Reports

Home

Sys Admin

Contact Log

File Upload

Exit SAFIS

Dealer Information

Name NY TEST State NY
 Addr. 205 BELLE MEAD ROAD
 City Dealer Fed #
 Zip 11733 Report Batch #

View Reports

Purchases From Fishing Vessels

Fisherman * State * New York
 License #
 Port Name *
 Date Landed(MM/DD/YY)** Time (HH:MM) Vessel Fed Permit # *
 Dt. Purchase(MM/DD/YY)** No Vessel USCG/ST Reg # *
 Vessel* VTR Serial #

* CNTRL-L for list of valid values or double-click mouse
 ** Double-click mouse to default date landed, purchase, and time

Species Selection Tree	Species	Grade	Market Category	Unit	Disposition*	Gear *	Qty	Price	Dollars
[-] Species					FOOD				
[-] Alewife									
[-] Amberjack									
[-] Anchovy_Bay									
[-] Barbier Red									
[-] Barracuda									
[-] Barrelfish									
[-] Bearded Brotul									
[-] Big Roughy									
[-] Black Bellied Ro									
[-] Black Whiting/Si									
[-] Bladder Wrack									

You Are Entering Log Books For: NY TEST

Refresh Total Total Dollars:
 Units: Dollars:

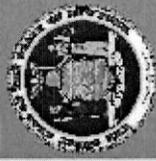
Fisherman for this set of landings. Selection list for frequently-used Fishermen.

Record: 1/1

Start

Standard Atlantic Fisheri...

Standard Atlantic Fis...



SAFIS

Username

WTEST

Password

Go

Enter

Save

Edit

Delete

Complete

View

Favorites

Reports

Home

Sys Admin

Contact Log

File Upload

Exit SAFIS

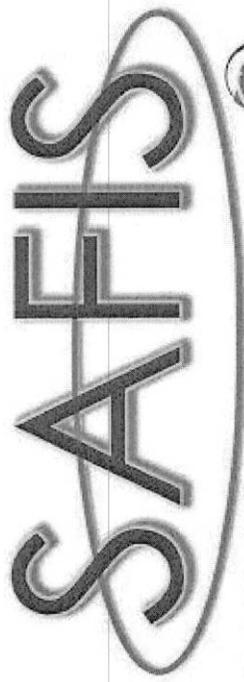
Menu Options

Please Select the Function You Wish to Perform

- FinFish Dealer Reports
- ShellFish Dealer Log Book
- Fishermen Lobster Log Book
- Negative Report

Continue

Exit



Created By The Partners Of The ACCSP

- [Quick Demo](#)
- [Get Started](#)
- [About SAFIS](#)
- [Help](#)
- [Home](#)

SAFIS is a real-time, web-based reporting system for commercial landings on the Atlantic coast. The Northeast Region of the National Marine Fisheries Service (NOAA Fisheries) and the Atlantic coastal states worked together to bring this state-of-the-art tool to the seafood industry.

Users Log-In

Username

Password

Go

Enter

Save

Edit

Delete

Complete

View

Favorites

Reports

Home

Sys Admin

Contact Log

File Upload

Lic. Transf...

Exit SAFIS

Past

Msg

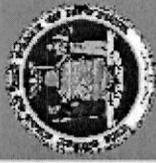
SAFIS Help

Web Pages

About SAFIS

Functions

Please enter your username and password then click GO to enable all functions



SAFIS

Username

NYTEST

Password

Go

Enter

Save

Edit

Delete

Complete

View

Favorites

Reports

Home

Sys Admin

Contact Log

File Upload

Exit SAFIS

Welcome to the Standard Atlantic Fisheries Information System - SAFIS

02/26/2004 NY SAFIS in Test Mode

Past
Msg



New York State Department of Environmental Conservation

SAFIS Help

Web Pages

About SAFIS

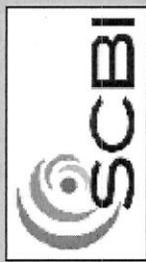
Functions

Please enter your username and password then click GO to enable all functions
GOOD MORNING NY TEST

- New Ticket
- Find Ticket
- Pay Fisherman
- Fishing License / Vessel Info
- Send Data
- Dealer Info
- Species
- Backup via Internet
- Exit

About Trip Ticket For Federally Licensed Dealers

Current Version: 1.0.0



For Questions Regarding Reporting Requirements, Contact:

NMFS
 ???-???-????
 or
 Email: ???@?????.COM

For Questions, Problems, or Ideas Regarding the Trip Ticket Computer Program, Contact:

Southwest Computer Bureau
 225-647-5375
 or
 Email: claude@scbi.com

Close

Update Notes

Empty text area for update notes

Printed: 06/10/2005

ACTIVE FISHING LICENSES

<u>Name</u>	<u>Lic Num</u>	<u>SSN</u>	<u>Home Phone</u>	<u>Vessel</u>
-------------	----------------	------------	-------------------	---------------

Number of Fishing Licenses:

New Ticket

Find Ticket

Pay Fisherman

Fishing License / Vessel Info

Send Data

Dealer Info

Species

Backup via Internet

Exit

Selected DB: C:\Program Files\FedTripTicket\TripTick.Mdb

4

Trip Ticket System

For Federally Licensed Dealers

Dealer and Setup Information

Dealer Name:

Federal Dealer Number: Next Ticket Number:

Deduction Tracking Number: Local Tax (%): State Tax (%):

Prompt For Database Backup
 Species Favorites
 Area Favorites
 Port Favorites
 Gear Favorites
 Networked
 Deductions By Vessel
 Activate Sign On Screen

Ticket Statement

Do Not Automatically Include On Tickets
 Include Statement On All Tickets

Close

Update

Close Reports

Fishing License

Xfr To Ticket

Close

Item Description

Qty Cost Lc Tx St Tx Sub Total Date Track #

06/08/05

Note:

Clear Item

Save New Item

Update Selected Item

Grand Total: 0

Delete

Item Description	Qty	Unit Cost	Loc Tax	St Tax	Sub Total	Track #	Ded Date	Note

Transferred

Transferred Total: 0

Delete

Item Description	Qty	Unit Cost	Loc Tax	St Tax	Sub Total	Track #	Ded Date	Xfr Date	Ticket #	Note

Close

Add To Favorites

Area Favorites

Gear Favorites

Port Favorites

Port	State	County	Favorite
Manitoba	CN	Canada MB	
New Brunswick	CN	Canada NB	
Newfoundland and Labrador	CN	Canada NL	
Nova Scotia	CN	Canada NS	
Ontario	CN	Canada ON	
Prince Edward Island	CN	Canada PE	
Quebec	CN	Canada QC	
Branford	CT	New Haven	
Bridgeport	CT	Fairfield	
Chester	CT	Middlesex	
Clinton	CT	Middlesex	
Cos Cob	CT	Fairfield	
Cromwell	CT	Middlesex	
Darien	CT	Fairfield	
Deep River	CT	Middlesex	
Derby (Derby-Shelton)	CT	New Haven	
East Haddam	CT	Middlesex	
East Hampton	CT	Middlesex	
East Haven	CT	New Haven	
East Lyme (Flanders)	CT	New London	
Essex	CT	Middlesex	
Fairfield	CT	Fairfield	
Glastonbury	CT	Hartford	

Close Delete Ticket Ticket Totals Report

Ticket Number Licensee

Show Which Tickets?

All Owed Paid

List Incomplete Tickets With ...

Previous / Today

From

To

Include Voided Tickets

Ticket Num	Fisherman Name	License	Purchase Date	Total Owed	Status

Licensee

Primary Lic/Permit

Primary Type

Secondary Lic/Permit

Secondary Type

Close

Active

First Name

MI

Last Name (or Vessel Name)

Suffix

DOB

Address 1

Address 2

City

State

Zip

Work Phone

Home Phone

Tax ID Number

SSN

Comment

Add

Update

New

Delete

Hide Inactive Licensees

Vessels

Add

Update

New

Delete

Vessel Name

...

Default Vessel

Vessel Hull Number

CG DO #

State Reg #

Or

VTR Required

Gear Default

Area Default

No Vessel

Ticket Num Void Packout

Vessel # License # Purch Date VTR #

Licensee's Name Add ...

Vessel Name ...

Port Tracking Number

Total Purchases

Deductions ...

Total Paid

Licensee

Total To Pay

Pay Now

Check #

Select All

Clear

Cash Check

Print Ticket

Close

Ticket Num	Purchase Date	Deducts	Purchases	Owed
[Empty Table Area]				

Close NMFS Utilities

Begin Date End Date

Previous

Day

Week

Month

Send To NMFS

Close

Current Trip Tickets (Not Yet Sent)

0

Ticket #	Purchase Date	Void	Name

Updated Trip Tickets (After Being Sent)

0

Ticket #	Purchase Date	Void	Name	3 Days

Official Files Sent

Date	Time	Tickets	Trans	Begin Date	End Date	Sent To	Updated	File Name

Price Update

Add To Favorites

Close Clear Refresh

Species Code Update

Reminders

 Permit Required Prohibited

Season Date Range
 Begin Date End Date
 Pounds Update

Code	Species	Fav.	Price	Perm. Req.	Season
ALERNDUN	ALEWIFE				- ROUND\UNKNOW\NLB
ALERNDLG	ALEWIFE				- ROUND\LARGE\LB
AMBERJACK	AMBERJACK				- ROUND\UNKNOW\NLB
ANCHOVY	ANCHOVY,BAY				- ROUND\UNKNOW\NLB
BARBIER	BARBIER,RED				- ROUND\UNKNOW\NLB
BARRACUDA	BARRACUDA				- ROUND\UNKNOW\NLB
BARRELFISH	BARRELFISH				- ROUND\UNKNOW\NLB
BROTULA	BEARDED BROTULA				- ROUND\UNKNOW\NLB
ROUGHY	BIG ROUGHY				- ROUND\UNKNOW\NLB
ROSEFISH	BLACK BELLED ROSEFISH				- ROUND\UNKNOW\NLB
BLKWHITING	BLACK WHITING/SILVER HAKE ...				- ROUND\UNKNOW\NLB
BLADWRACK	BLADDER WRACK				- UNGRADED\UNKNOW\NLB
BLOODWORMS	BLOODWORMS				- UNGRADED\UNKNOW\NLB
BLUERUN	BLUE RUNNER				- ROUND\UNKNOW\NLB
BLURNDUN	BLUEFISH				- ROUND\UNKNOW\NLB
BLURNDSQ	BLUEFISH				- ROUND\SMALL\LB
BLURNMD	BLUEFISH				- ROUND\MEDIUM\LB
BLURNDLG	BLUEFISH				- ROUND\LARGE\LB
BLUGUT	BLUEFISH				- GUTTED\UNKNOW\NLB

	New Ticket		Find Ticket		Pay Fisherman		Fishing License / Vessel Info		Send Data		Dealer Info		Species		Backup via Internet		Exit
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3 Selected DB: C:\Program Files\FedTripTicket\TripTick.Mdb

Trip Ticket System For Federally Licensed Dealers



Southwest Computer Bureau
104B East Cornerview St.
Gonzales, LA 70737
225-647-5375

Summary By Fishing License

Report Type: Licensee

Licensee: **PRINT ALL FISHING LICENSES**

Date Range: Begin Date: / / End Date: / /

Criteria: Dealer Code: []

Report Options:

- Summary Info Only
- All Transactions
- Include Deductions
- Insert Page Breaks

Print Options:

- Print To Screen
- Print Directly To Printer

Exclude Packout Items: Packout Only: Paid: Owed:

Buttons: Previous Day Week Month Today Print Close

New Ticket
 Find Ticket
 Pay Fisherman
 Fishing License / Vessel Info
 Send Data
 Dealer Info
 Species
 Backup via Internet
 Exit

Summary By Vessel

Report Type:

Vessels:

Date Range: Begin Date End Date

Criteria: Dealer Code

Exclude Packout Items
 Packout Only
 Paid Owed

Report Options:
 Summary Info Only
 All Transactions
 Insert Page Breaks

Print Options:
 Print To Screen
 Print Directly To Printer

SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS 16 U.S.C. 1853

95-354, 99-659, 101-627, 104-297

(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), or both; and

(C) consistent with the national standards, the other provisions of this Act, 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 interest 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;

109-479

(5) specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, charter fishing, and fish processing 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, economic information necessary to meet the requirements of this Act, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors;

(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 305(b)(1)(A), 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 304(a) (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;

109-479

(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 analyze the likely effects, if any, including the cumulative conservation, economic, and social impacts, of the conservation and management measures on, and possible mitigation measures for—

(A) participants in the fisheries and fishing communities affected by the plan or amendment;

(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; and

(C) the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants in the fishery;

(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;

16 U.S.C. 1853
MSA § 303

(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;

109-479

(13) include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery, including its economic impact, and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors;

109-479

(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate, taking into consideration the economic impact of the harvest restrictions or recovery benefits on the fishery participants in each sector, any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery and;

109-479

(15) establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.

97-453, 99-659, 101-627, 102-251, 104-297

(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 special areas,]* or for anadromous species or Continental Shelf fishery resources beyond such zone [or areas]*;

(B) the operator of any such vessel; or

(C) any United States fish processor who first receives fish that are subject to the plan;

109-479

(2)(A) 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;

(B) designate such zones in areas where deep sea corals are identified under section 408, to protect deep sea corals from physical damage from fishing gear or to prevent loss or damage to such fishing gear from interactions with deep sea corals, after considering long-term sustainable uses of fishery resources in such areas; and

(C) with respect to any closure of an area under this Act that prohibits all fishing, ensure that such closure—

- (i) is based on the best scientific information available;
- (ii) includes criteria to assess the conservation benefit of the closed area;
- (iii) establishes a timetable for review of the closed area's performance that is consistent with the purposes of the closed area; and
- (iv) is based on an assessment of the benefits and impacts of the closure, including its size, in relation to other management measures (either alone or in combination with such measures), including the benefits and impacts of limiting access to: users of the area, overall fishing activity, fishery science, and fishery and marine conservation;

(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 204;

(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 Act;

109-479

(5) incorporate (consistent with the national standards, the other provisions of this Act, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery and take into account the different circumstances affecting fisheries from different States and ports, including distances to fishing grounds and proximity to time and area closures;

109-479

(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;
- (F) the fair and equitable distribution of access privileges in the fishery; and
- (G) any other relevant considerations;

16 U.S.C. 1853
MSA § 303

(7) require fish processors who first receive fish that are subject to the plan to submit 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 Act, 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;

109-479

(12) include management measures in the plan to conserve target and non-target species and habitats, considering the variety of ecological factors affecting fishery populations; and

(14)[sic]¹⁵ 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.

97-453, 104-297

(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 304; 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 304.

¹⁵ So in original.

P.L. 109-479, sec. 104(b), MSA § 303 note

16 U.S.C. 1853 note

EFFECTIVE DATES; APPLICATION TO CERTAIN SPECIES.—The amendment made by subsection (a)(10)¹⁶—

(1) shall, unless otherwise provided for under an international agreement in which the United States participates, take effect—

(A) in fishing year 2010 for fisheries determined by the Secretary to be subject to overfishing; and

(B) in fishing year 2011 for all other fisheries; and

(2) shall not apply to a fishery for species that have a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing of that species; and

(3) shall not limit or otherwise affect the requirements of section 301(a)(1) or 304(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851(a)(1) or 1854(e), respectively).

109-479

SEC. 303A. LIMITED ACCESS PRIVILEGE PROGRAMS.

16 U.S.C. 1853a

(a) **IN GENERAL.**—After the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, a Council may submit, and the Secretary may approve, for a fishery that is managed under a limited access system, a limited access privilege program to harvest fish if the program meets the requirements of this section.

(b) **NO CREATION OF RIGHT, TITLE, OR INTEREST.**—Limited access privilege, quota share, or other limited access system authorization established, implemented, or managed under this Act—

(1) shall be considered a permit for the purposes of sections 307, 308, and 309;

(2) may be revoked, limited, or modified at any time in accordance with this Act, including revocation if the system is found to have jeopardized the sustainability of the stock or the safety of fishermen;

(3) shall not confer any right of compensation to the holder of such limited access privilege, quota share, or other such limited access system authorization if it is revoked, limited, or modified;

(4) shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested by the holder; and

(5) shall be considered a grant of permission to the holder of the limited access privilege or quota share to engage in activities permitted by such limited access privilege or quota share.

¹⁶ Section 104(a)(10) of P.L. 109-479 added section 303(a)(15).

(c) REQUIREMENTS FOR LIMITED ACCESS PRIVILEGES.—

(1) IN GENERAL.—Any limited access privilege program to harvest fish submitted by a Council or approved by the Secretary under this section shall—

(A) if established in a fishery that is overfished or subject to a rebuilding plan, assist in its rebuilding;

(B) if established in a fishery that is determined by the Secretary or the Council to have over-capacity, contribute to reducing capacity;

(C) promote—

(i) fishing safety;

(ii) fishery conservation and management; and

(iii) social and economic benefits;

(D) prohibit any person other than a United States citizen, a corporation, partnership, or other entity established under the laws of the United States or any State, or a permanent resident alien, that meets the eligibility and participation requirements established in the program from acquiring a privilege to harvest fish, including any person that acquires a limited access privilege solely for the purpose of perfecting or realizing on a security interest in such privilege;

(E) require that all fish harvested under a limited access privilege program be processed on vessels of the United States or on United States soil (including any territory of the United States);

(F) specify the goals of the program;

(G) include provisions for the regular monitoring and review by the Council and the Secretary of the operations of the program, including determining progress in meeting the goals of the program and this Act, and any necessary modification of the program to meet those goals, with a formal and detailed review 5 years after the implementation of the program and thereafter to coincide with scheduled Council review of the relevant fishery management plan (but no less frequently than once every 7 years);

(H) include an effective system for enforcement, monitoring, and management of the program, including the use of observers or electronic monitoring systems;

(I) include an appeals process for administrative review of the Secretary's decisions regarding initial allocation of limited access privileges;

(J) provide for the establishment by the Secretary, in consultation with appropriate Federal agencies, for an information collection and review process to provide any additional information needed to determine whether any illegal acts of anti-competition, anti-trust, price collusion, or price fixing have occurred among regional fishery associations or persons receiving limited access privileges under the program; and

(K) provide for the revocation by the Secretary of limited access privileges held by any person found to have violated the antitrust laws of the United States.

(2) WAIVER.—The Secretary may waive the requirement of paragraph (1)(E) if the Secretary determines that—

- (A) the fishery has historically processed the fish outside of the United States; and
- (B) the United States has a seafood safety equivalency agreement with the country where processing will occur.

(3) FISHING COMMUNITIES.—

(A) IN GENERAL.—

(i) ELIGIBILITY.—To be eligible to participate in a limited access privilege program to harvest fish, a fishing community shall—

- (I) be located within the management area of the relevant Council;
- (II) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;
- (III) consist of residents who conduct commercial or recreational fishing, processing, or fishery-dependent support businesses within the Council's management area; and
- (IV) develop and submit a community sustainability plan to the Council and the Secretary that demonstrates how the plan will address the social and economic development needs of coastal communities, including those that have not historically had the resources to participate in the fishery, for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(ii) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section for any person who fails to comply with the requirements of the community sustainability plan. Any limited access privileges denied or revoked under this section may be reallocated to other eligible members of the fishing community.

- (B) PARTICIPATION CRITERIA.—In developing participation criteria for eligible communities under this paragraph, a Council shall consider—
- (i) traditional fishing or processing practices in, and dependence on, the fishery;
 - (ii) the cultural and social framework relevant to the fishery;
 - (iii) economic barriers to access to fishery;
 - (iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;
 - (v) the expected effectiveness, operational transparency, and equitability of the community sustainability plan; and
 - (vi) the potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting or processing activities in the fishery.

(4) REGIONAL FISHERY ASSOCIATIONS.—

(A) IN GENERAL.—To be eligible to participate in a limited access privilege program to harvest fish, a regional fishery association shall—

- (i) be located within the management area of the relevant Council;
- (ii) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;
- (iii) be a voluntary association with established by-laws and operating procedures;
- (iv) consist of participants in the fishery who hold quota share that are designated for use in the specific region or subregion covered by the regional fishery association, including commercial or recreational fishing, processing, fishery-dependent support businesses, or fishing communities;
- (v) not be eligible to receive an initial allocation of a limited access privilege but may acquire such privileges after the initial allocation, and may hold the annual fishing privileges of any limited access privileges it holds or the annual fishing privileges that is [sic]¹⁷ members contribute; and
- (vi) develop and submit a regional fishery association plan to the Council and the Secretary for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(B) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section to any person participating in a regional fishery association who fails to comply with the requirements of the regional fishery association plan.

¹⁷ So in original.

(C) PARTICIPATION CRITERIA.—In developing participation criteria for eligible regional fishery associations under this paragraph, a Council shall consider—

- (i) traditional fishing or processing practices in, and dependence on, the fishery;
- (ii) the cultural and social framework relevant to the fishery;
- (iii) economic barriers to access to fishery;
- (iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;
- (v) the administrative and fiduciary soundness of the association; and
- (vi) the expected effectiveness, operational transparency, and equitability of the fishery association plan.

(5) ALLOCATION.—In developing a limited access privilege program to harvest fish a Council or the Secretary shall—

(A) establish procedures to ensure fair and equitable initial allocations, including consideration of—

- (i) current and historical harvests;
- (ii) employment in the harvesting and processing sectors;
- (iii) investments in, and dependence upon, the fishery; and
- (iv) the current and historical participation of fishing communities;

(B) consider the basic cultural and social framework of the fishery, especially through—

- (i) the development of policies to promote the sustained participation of small owner-operated fishing vessels and fishing communities that depend on the fisheries, including regional or port-specific landing or delivery requirements; and
- (ii) procedures to address concerns over excessive geographic or other consolidation in the harvesting or processing sectors of the fishery;

(C) include measures to assist, when necessary and appropriate, entry-level and small vessel owner-operators, captains, crew, and fishing communities through set-asides of harvesting allocations, including providing privileges, which may include set-asides or allocations of harvesting privileges, or economic assistance in the purchase of limited access privileges;

(D) ensure that limited access privilege holders do not acquire an excessive share of the total limited access privileges in the program by—

- (i) establishing a maximum share, expressed as a percentage of the total limited access privileges, that a limited access privilege holder is permitted to hold, acquire, or use; and
- (ii) establishing any other limitations or measures necessary to prevent an inequitable concentration of limited access privileges; and

(E) authorize limited access privileges to harvest fish to be held, acquired, used by, or issued under the system to persons who substantially participate in the fishery, including in a specific sector of such fishery, as specified by the Council.

(6) PROGRAM INITIATION.—

(A) LIMITATION.—Except as provided in subparagraph (D), a Council may initiate a fishery management plan or amendment to establish a limited access privilege program to harvest fish on its own initiative or if the Secretary has certified an appropriate petition.

(B) PETITION.—A group of fishermen constituting more than 50 percent of the permit holders, or holding more than 50 percent of the allocation, in the fishery for which a limited access privilege program to harvest fish is sought, may submit a petition to the Secretary requesting that the relevant Council or Councils with authority over the fishery be authorized to initiate the development of the program. Any such petition shall clearly state the fishery to which the limited access privilege program would apply. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the limited access program shall be eligible to sign a petition for such a program and shall serve as the basis for determining the percentage described in the first sentence of this subparagraph.

(C) CERTIFICATION BY SECRETARY.—Upon the receipt of any such petition, the Secretary shall review all of the signatures on the petition and, if the Secretary determines that the signatures on the petition represent more than 50 percent of the permit holders, or holders of more than 50 percent of the allocation in the fishery, as described by subparagraph (B), the Secretary shall certify the petition to the appropriate Council or Councils.

(D) NEW ENGLAND AND GULF REFERENDUM.—

(i) Except as provided in clause (iii) for the Gulf of Mexico commercial red snapper fishery, the New England and Gulf Councils may not submit, and the Secretary may not approve or implement, a fishery management plan or amendment that creates an individual fishing quota program, including a Secretarial plan, unless such a system, as ultimately developed, has been approved by more than 2/3 of those voting in a referendum among eligible permit holders, or other persons described in clause (v), with respect to the New England Council, and by a majority of those voting in the referendum among eligible permit holders with respect to the Gulf Council. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the individual fishing quota program shall be eligible to vote in such a referendum. If an individual fishing quota program fails to be approved by the requisite number of those voting, it may be revised and submitted for approval in a subsequent referendum.

(ii) The Secretary shall conduct a referendum under this subparagraph, including notifying all persons eligible to participate in the referendum and making available to them information concerning the schedule, procedures, and eligibility requirements for the referendum process and the proposed individual fishing quota program. Within 1 year after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary shall publish guidelines and procedures to determine procedures and voting eligibility requirements for referenda and to conduct such referenda in a fair and equitable manner.

(iii) The provisions of section 407(c) of this Act shall apply in lieu of this subparagraph for an individual fishing quota program for the Gulf of Mexico commercial red snapper fishery.

(iv) Chapter 35 of title 44, United States Code, (commonly known as the Paperwork Reduction Act) does not apply to the referenda conducted under this subparagraph.

(v) The Secretary shall promulgate criteria for determining whether additional fishery participants are eligible to vote in the New England referendum described in clause (i) in order to ensure that crew members who derive a significant percentage of their total income from the fishery under the proposed program are eligible to vote in the referendum.

(vi) In this subparagraph, the term ‘individual fishing quota’ does not include a sector allocation.

(7) TRANSFERABILITY.—In establishing a limited access privilege program, a Council shall—

(A) establish a policy and criteria for the transferability of limited access privileges (through sale or lease), that is consistent with the policies adopted by the Council for the fishery under paragraph (5); and

(B) establish, in coordination with the Secretary, a process for monitoring of transfers (including sales and leases) of limited access privileges.

(8) PREPARATION AND IMPLEMENTATION OF SECRETARIAL PLANS.—This subsection also applies to a plan prepared and implemented by the Secretary under section 304(c) or 304(g).

(9) ANTITRUST SAVINGS CLAUSE.—Nothing in this Act shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of the preceding sentence, the term ‘antitrust laws’ has the meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

16 U.S.C. 1853a
MSA § 303A

(d) AUCTION AND OTHER PROGRAMS.—In establishing a limited access privilege program, a Council shall consider, and may provide, if appropriate, an auction system or other program to collect royalties for the initial, or any subsequent, distribution of allocations in a limited access privilege program if—

(1) the system or program is administered in such a way that the resulting distribution of limited access privilege shares meets the program requirements of this section; and

(2) revenues generated through such a royalty program are deposited in the Limited Access System Administration Fund established by section 305(h)(5)(B) and available subject to annual appropriations.

(e) COST RECOVERY.—In establishing a limited access privilege program, a Council shall—

(1) develop a methodology and the means to identify and assess the management, data collection and analysis, and enforcement programs that are directly related to and in support of the program; and

(2) provide, under section 304(d)(2), for a program of fees paid by limited access privilege holders that will cover the costs of management, data collection and analysis, and enforcement activities.

(f) CHARACTERISTICS.—A limited access privilege established after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 is a permit issued for a period of not more than 10 years that—

(1) will be renewed before the end of that period, unless it has been revoked, limited, or modified as provided in this subsection;

(2) will be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have failed to comply with any term of the plan identified in the plan as cause for revocation, limitation, or modification of a permit, which may include conservation requirements established under the plan;

(3) may be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have committed an act prohibited by section 307 of this Act; and

(4) may be acquired, or reacquired, by participants in the program under a mechanism established by the Council if it has been revoked, limited, or modified under paragraph (2) or (3).

(g) LIMITED ACCESS PRIVILEGE ASSISTED PURCHASE PROGRAM.—

(1) IN GENERAL.—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 304(d)(2) to be used, pursuant to section 53706(a)(7) of title 46, United States Code, to issue obligations that aid in financing—

(A) the purchase of limited access privileges in that fishery by fishermen who fish from small vessels; and

(B) the first-time purchase of limited access privileges in that fishery by entry level fishermen.

(2) ELIGIBILITY CRITERIA.—A Council making a submission under paragraph (1) shall recommend criteria, consistent with the provisions of this Act, that a fisherman must meet to qualify for guarantees under subparagraphs (A) and (B) of paragraph (1) and the portion of funds to be allocated for guarantees under each subparagraph.

(h) EFFECT ON CERTAIN EXISTING SHARES AND PROGRAMS.—Nothing in this Act, or the amendments made by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, shall be construed to require a reallocation or a reevaluation of individual quota shares, processor quota shares, cooperative programs, or other quota programs, including sector allocation in effect before the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006.

(i) TRANSITION RULES.—

(1) IN GENERAL.—The requirements of this section shall not apply to any quota program, including any individual quota program, cooperative program, or sector allocation for which a Council has taken final action or which has been submitted by a Council to the Secretary, or approved by the Secretary, within 6 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, except that—

(A) the requirements of section 303(d) of this Act in effect on the day before the date of enactment of that Act shall apply to any such program;

(B) the program shall be subject to review under subsection (c)(1)(G) of this section not later than 5 years after the program implementation; and

(C) nothing in this subsection precludes a Council from incorporating criteria contained in this section into any such plans.

(2) PACIFIC GROUND FISH PROPOSALS.—The requirements of this section, other than subparagraphs (A) and (B) of subsection (c)(1) and subparagraphs (A), (B), and (C) of paragraph (1) of this subsection, shall not apply to any proposal authorized under section 302(f) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 that is submitted within the timeframe prescribed by that section.

16 U.S.C. 1853a note, 1854
MSA §§ 303A note, 304

P.L. 109-479, sec. 106(e), MSA § 303A note

16 U.S.C. 1853a note

APPLICATION WITH AMERICAN FISHERIES ACT.—Nothing in section 303A of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), as added by subsection (a) [P.L. 109-479], shall be construed to modify or supersede any provision of the American Fisheries Act (46 U.S.C. 12102 note; 16 U.S.C. 1851 note; et alia).

P.L. 104-297, sec. 108(i), MSA § 303 note

EXISTING QUOTA PLANS.—Nothing in this Act [P.L.104-297] 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.

SEC. 304. ACTION BY THE SECRETARY

16 U.S.C. 1854

104-297

(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 Act, 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 303(a)(6).

(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.

104-297

SEC. 402. INFORMATION COLLECTION

16 U.S.C. 1881a

109-479

(a) COLLECTION PROGRAMS.—

(1) COUNCIL REQUESTS.—If a Council determines that additional information 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 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 paragraph regarding a Council request shall be made within a reasonable period of time after receipt of that request.

(2) SECRETARIAL INITIATION.—If the Secretary determines that additional information is necessary for developing, implementing, revising, or monitoring a fishery management plan, or for determining whether a fishery is in need of management, the Secretary may, by regulation, implement an information collection or observer program requiring submission of such additional information for the fishery.

109-479

(b) CONFIDENTIALITY OF INFORMATION.—

(1) Any information submitted to the Secretary, a State fishery management agency, or a marine fisheries commission by any person in compliance with the requirements of this Act shall be confidential and shall not be disclosed except—

(A) to Federal employees and Council employees who are responsible for fishery management plan development, monitoring, or enforcement;

(B) to State or Marine Fisheries Commission employees as necessary to further the Department's mission, subject to a confidentiality agreement that prohibits public disclosure of the identity of business of any person;

(C) to State employees who are responsible for fishery management plan enforcement, if the States employing those employees have entered into a fishery enforcement agreement with the Secretary and the agreement is in effect;

(D) when required by court order;

(E) when such information is used by State, Council, or Marine Fisheries Commission employees to verify catch under a limited access program, but only to the extent that such use is consistent with subparagraph (B);

(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 Act;

(G) when such information is required to be submitted to the Secretary for any determination under a limited access program; or

(H) in support of homeland and national security activities, including the Coast Guard's homeland security missions as defined in section 888(a)(2) of the Homeland Security Act of 2002 (6 U.S.C. 468(a)(2)).

(2) Any observer information shall be confidential and shall not be disclosed, except in accordance with the requirements of subparagraphs (A) through (H) of paragraph (1), or—

(A) as authorized by a fishery management plan or regulations under the authority of the North Pacific Council to allow disclosure to the public of weekly summary bycatch information identified by vessel or for haul-specific bycatch information without vessel identification;

(B) when such information is necessary in proceedings to adjudicate observer certifications; or

(C) as authorized by any regulations issued under paragraph (3) allowing the collection of observer information, pursuant to a confidentiality agreement between the observers, observer employers, and the Secretary prohibiting disclosure of the information by the observers or observer employers, in order—

(i) to allow the sharing of observer information among observers and between observers and observer employers as necessary to train and prepare observers for deployments on specific vessels; or

(ii) to validate the accuracy of the observer information collected.

(3) 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 Act, 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 Act or the use, release, or publication of bycatch information pursuant to paragraph (2)(A).

(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 Act, 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 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.

16 U.S.C. 1881a-1881b
MSA §§ 402-403

(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.

104-297

SEC. 403. OBSERVERS

16 U.S.C. 1881b

(a) **GUIDELINES FOR CARRYING OBSERVERS.**—Within one year after the date of enactment of the Sustainable Fisheries Act, 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.

ENDANGERED SPECIES ACT OF 1973

Q:\COMP\WILDLIFE\ESA73

January 24, 2002

ENDANGERED SPECIES ACT OF 1973

[Public Law 93–205, Approved Dec. 28, 1973, 87 Stat. 884]

[As Amended Through Public Law 107–136, Jan. 24, 2002]

AN ACT To provide for the conservation of endangered and threatened species of fish, wildlife, and plants, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [16 U.S.C. 1531 note] That this Act may be cited as the “Endangered Species Act of 1973”.

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FINDINGS, PURPOSES, AND POLICY

SEC. 2. [16 U.S.C. 1531] (a) FINDINGS.—The Congress finds and declares that—

(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;

(2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction;

(3) these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;

¹ Bracketed material does *not* appear in Act. Sec. 1012 of P.L. 100–478, 102 Stat. 2314, October 7, 1988, added sec. 18 of the Act but did not conform the table of contents of the Act.

(4) the United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to—

(A) migratory bird treaties with Canada and Mexico;

(B) the Migratory and Endangered Bird Treaty with Japan;

(C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;

(D) the International Convention for the Northwest Atlantic Fisheries;

(E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;

(F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and

(G) other international agreements; and

(5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish, wildlife, and plants.

(b) PURPOSES.—The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.

(c) POLICY.—(1) It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.

(2) It is further declared to be the policy of Congress that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species.

DEFINITIONS

SEC. 3. [16 U.S.C. 1532] For the purposes of this Act—

(1) The term “alternative courses of action” means all alternatives and thus is not limited to original project objectives and agency jurisdiction.

(2) The term “commercial activity” means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling: *Provided, however,* That it does not include exhibitions of commodities by museums or similar cultural or historical organizations.

(3) The terms “conserve,” “conserving,” and “conservation” mean to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are

no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

(4) The term "Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto.

(5)(A) The term "critical habitat" for a threatened or endangered species means—

(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and

(ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

(B) Critical habitat may be established for those species now listed as threatened or endangered species for which no critical habitat has heretofore been established as set forth in subparagraph (A) of this paragraph.

(C) Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species.

(6) The term "endangered species" means any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this Act would present an overwhelming and overriding risk to man.

(7) The term "Federal agency" means any department, agency, or instrumentality of the United States.

(8) The term "fish or wildlife" means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

(9) The term "foreign commerce" includes, among other things, any transaction—

(A) between persons within one foreign country;

(B) between persons in two or more foreign countries;

(C) between a person within the United States and a person in a foreign country; or

(D) between persons within the United States, where the fish and wildlife in question are moving in any country or countries outside the United States.

(10) The term “import” means to land on, bring into, or introduce into or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

[(11) Repealed by section 4(b) of P.L. 97-304, 96 Stat. 1420.]

(12) The term “permit or license applicant” means, when used with respect to an action of a Federal agency for which exemption is sought under section 7, any person whose application to such agency for a permit or license has been denied primarily because of the application of section 7(a) to such agency action.

(13) The term “person” means an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State, or of any foreign government; any State, municipality, or political subdivision of a State; or any other entity subject to the jurisdiction of the United States.

(14) The term “plant” means any member of the plant kingdom, including seeds, roots and other parts thereof.

(15) The term “Secretary” means, except as otherwise herein provided, the Secretary of the Interior or the Secretary of Commerce as program responsibilities are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970; except that with respect to the enforcement of the provisions of this Act and the Convention which pertain to the importation or exportation of terrestrial plants, the term also means the Secretary of Agriculture.

(16) The term “species” includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.

(17) The term “State” means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(18) The term “State agency” means any State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish, plant, or wildlife resources within a State.

(19) The term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

(20) The term “threatened species” means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(21) The term “United States,” when used in a geographical context, includes all States.

DETERMINATION OF ENDANGERED SPECIES AND THREATENED SPECIES

SEC. 4. [16 U.S.C. 1533] (a) GENERAL.—(1) The Secretary shall by regulation promulgated in accordance with subsection (b) determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) the present or threatened destruction, modification, or curtailment of its habitat or range;

(B) overutilization for commercial, recreational, scientific, or educational purposes;

(C) disease or predation;

(D) the inadequacy of existing regulatory mechanisms; or

(E) other natural or manmade factors affecting its continued existence.

(2) With respect to any species over which program responsibilities have been vested in the Secretary of Commerce pursuant to Reorganization Plan Numbered 4 of 1970—

(A) in any case in which the Secretary of Commerce determines that such species should—

(i) be listed as an endangered species or a threatened species, or

(ii) be changed in status from a threatened species to an endangered species, he shall so inform the Secretary of the Interior, who shall list such species in accordance with this section;

(B) in any case in which the Secretary of Commerce determines that such species should—

(i) be removed from any list published pursuant to subsection (c) of this section, or

(ii) be changed in status from an endangered species to a threatened species, he shall recommend such action to the Secretary of the Interior, and the Secretary of the Interior, if he concurs in the recommendation, shall implement such action; and

(C) the Secretary of the Interior may not list or remove from any list any such species, and may not change the status of any such species which are listed, without a prior favorable determination made pursuant to this section by the Secretary of Commerce.

(3) The Secretary, by regulation promulgated in accordance with subsection (b) and to the maximum extent prudent and determinable—

(A) shall, concurrently with making a determination under paragraph (1) that a species is an endangered species or a threatened species, designate any habitat of such species which is then considered to be critical habitat; and

(B) may, from time-to-time thereafter as appropriate, revise such designation.

(b) BASIS FOR DETERMINATIONS.—(1)(A) The Secretary shall make determinations required by subsection (a)(1) solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas.

(B) In carrying out this section, the Secretary shall give consideration to species which have been—

(i) designated as requiring protection from unrestricted commerce by any foreign nation, or pursuant to any international agreement; or

(ii) identified as in danger of extinction, or likely to become so within the foreseeable future, by any State agency or by any agency of a foreign nation that is responsible for the conservation of fish or wildlife or plants.

(2) The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

(3)(A) To the maximum extent practicable, within 90 days after receiving the petition of an interested person under section 553(e) of title 5, United States Code, to add a species to, or to remove a species from, either of the lists published under subsection (c), the Secretary shall make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. If such a petition is found to present such information, the Secretary shall promptly commence a review of the status of the species concerned. The Secretary shall promptly publish each finding made under this subparagraph in the Federal Register.

(B) Within 12 months after receiving a petition that is found under subparagraph (A) to present substantial information indicating that the petitioned action may be warranted, the Secretary shall make one of the following findings:

(i) The petitioned action is not warranted, in which case the Secretary shall promptly publish such finding in the Federal Register.

(ii) The petitioned action is warranted in which case the Secretary shall promptly publish in the Federal Register a general notice and the complete text of a proposed regulation to implement such action in accordance with paragraph (5).

(iii) The petitioned action is warranted but that—

(I) the immediate proposal and timely promulgation of a final regulation implementing the petitioned action in accordance with paragraphs (5) and (6) is precluded by pending proposals to determine whether any species is an endangered species or a threatened species, and

(II) expeditious progress is being made to add qualified species to either of the lists published under subsection (c) and to remove from such lists species for which the protections of the Act are no longer necessary, in which case the Secretary shall promptly publish such finding in the Federal Register, together with a description and evaluation of the reasons and data on which the finding is based.

(C)(i) A petition with respect to which a finding is made under subparagraph (B)(iii) shall be treated as a petition that is resubmitted to the Secretary under subparagraph (A) on the date of such finding and that presents substantial scientific or commercial information that the petitioned action may be warranted.

(ii) Any negative finding described in subparagraph (A) and any finding described in subparagraph (B)(i) or (iii) shall be subject to judicial review.

(iii) The Secretary shall implement a system to monitor effectively the status of all species with respect to which a finding is made under subparagraph (B)(iii) and shall make prompt use of the authority under paragraph 7¹ to prevent a significant risk to the well being of any such species.

(D)(i) To the maximum extent practicable, within 90 days after receiving the petition of an interested person under section 553(e) of title 5, United States Code, to revise a critical habitat designation, the Secretary shall make a finding as to whether the petition presents substantial scientific information indicating that the revision may be warranted. The Secretary shall promptly publish such finding in the Federal Register.

(ii) Within 12 months after receiving a petition that is found under clause (i) to present substantial information indicating that the requested revision may be warranted, the Secretary shall determine how he intends to proceed with the requested revision, and shall promptly publish notice of such intention in the Federal Register.

(4) Except as provided in paragraphs (5) and (6) of this subsection, the provisions of section 553 of title 5, United States Code (relating to rulemaking procedures), shall apply to any regulation promulgated to carry out the purposes of this Act.

(5) With respect to any regulation proposed by the Secretary to implement a determination, designation, or revision referred to in subsection (a)(1) or (3), the Secretary shall—

(A) not less than 90 days before the effective date of the regulation—

(i) publish a general notice and the complete text of the proposed regulation in the Federal Register, and

(ii) give actual notice of the proposed regulation (including the complete text of the regulation) to the State agency in each State in which the species is believed to occur, and to each county or equivalent jurisdiction in which the species is believed to occur, and invite the comment of such agency, and each such jurisdiction, thereon;

(B) insofar as practical, and in cooperation with the Secretary of State, give notice of the proposed regulation to each foreign nation in which the species is believed to occur or whose citizens harvest the species on the high seas, and invite the comment of such nation thereon;

(C) give notice of the proposed regulation to such professional scientific organizations as he deems appropriate;

¹ So in original. Probably should be paragraph "(7)".

(D) publish a summary of the proposed regulation in a newspaper of general circulation in each area of the United States in which the species is believed to occur; and

(E) promptly hold one public hearing on the proposed regulation if any person files a request for such a hearing within 45 days after the date of publication of general notice.

(6)(A) Within the one-year period beginning on the date on which general notice is published in accordance with paragraph (5)(A)(i) regarding a proposed regulation, the Secretary shall publish in the Federal Register—

(i) if a determination as to whether a species is an endangered species or a threatened species, or a revision of critical habitat, is involved, either—

(I) a final regulation to implement such determination,

(II) a final regulation to implement such revision or a finding that such revision should not be made,

(III) notice that such one-year period is being extended under subparagraph (B)(i), or

(IV) notice that the proposed regulation is being withdrawn under subparagraph (B)(ii), together with the finding on which such withdrawal is based; or

(ii) subject to subparagraph (C), if a designation of critical habitat is involved, either—

(I) a final regulation to implement such designation, or

(II) notice that such one-year period is being extended under such subparagraph.

(B)(i) If the Secretary finds with respect to a proposed regulation referred to in subparagraph (A)(i) that there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned, the Secretary may extend the one-year period specified in subparagraph (A) for not more than six months for purposes of soliciting additional data.

(ii) If a proposed regulation referred to in subparagraph (A)(i) is not promulgated as a final regulation within such one-year period (or longer period if extension under clause (i) applies) because the Secretary finds that there is not sufficient evidence to justify the action proposed by the regulation, the Secretary shall immediately withdraw the regulation. The finding on which a withdrawal is based shall be subject to judicial review. The Secretary may not propose a regulation that has previously been withdrawn under this clause unless he determines that sufficient new information is available to warrant such proposal.

(iii) If the one-year period specified in subparagraph (A) is extended under clause (i) with respect to a proposed regulation, then before the close of such extended period the Secretary shall publish in the Federal Register either a final regulation to implement the determination or revision concerned, a finding that the revision should not be made, or a notice of withdrawal of the regulation under clause (ii), together with the finding on which the withdrawal is based.

(C) A final regulation designating critical habitat of an endangered species or a threatened species shall be published concurrently with the final regulation implementing the determination

that such species is endangered or threatened, unless the Secretary deems that—

(i) it is essential to the conservation of such species that the regulation implementing such determination be promptly published; or

(ii) critical habitat of such species is not then determinable, in which case the Secretary, with respect to the proposed regulation to designate such habitat, may extend the one-year period specified in subparagraph (A) by not more than one additional year, but not later than the close of such additional year the Secretary must publish a final regulation, based on such data as may be available at that time, designating, to the maximum extent prudent, such habitat.

(7) Neither paragraph (4), (5), or (6) of this subsection nor section 553 of title 5, United States Code, shall apply to any regulation issued by the Secretary in regard to any emergency posing a significant risk to the well-being of any species of fish and wildlife or plants, but only if—

(A) at the time of publication of the regulation in the Federal Register the Secretary publishes therein detailed reasons why such regulation is necessary; and

(B) in the case such regulation applies to resident species of fish or wildlife, or plants, the Secretary gives actual notice of such regulation to the State agency in each State in which such species is believed to occur.

Such regulation shall, at the discretion of the Secretary, take effect immediately upon the publication of the regulation in the Federal Register. Any regulation promulgated under the authority of this paragraph shall cease to have force and effect at the close of the 240-day period following the date of publication unless, during such 240-day period, the rulemaking procedures which would apply to such regulation without regard to this paragraph are complied with. If at any time after issuing an emergency regulation the Secretary determines, on the basis of the best appropriate data available to him, that substantial evidence does not exist to warrant such regulation, he shall withdraw it.

(8) The publication in the Federal Register of any proposed or final regulation which is necessary or appropriate to carry out the purposes of this Act shall include a summary by the Secretary of the data on which such regulation is based and shall show the relationship of such data to such regulation; and if such regulation designates or revises critical habitat, such summary shall, to the maximum extent practicable, also include a brief description and evaluation of those activities (whether public or private) which, in the opinion of the Secretary, if undertaken may adversely modify such habitat, or may be affected by such designation.

(c) LISTS.—(1) The Secretary of the Interior shall publish in the Federal Register a list of all species determined by him or the Secretary of Commerce to be endangered species and a list of all species determined by him or the Secretary of Commerce to be threatened species. Each list shall refer to the species contained therein by scientific and common name or names, if any, specify with respect to such species over what portion of its range it is endangered or threatened, and specify any critical habitat within such range.

The Secretary shall from time to time revise each list published under the authority of this subsection to reflect recent determinations, designations, and revisions made in accordance with subsections (a) and (b).

(2) The Secretary shall—

(A) conduct, at least once every five years, a review of all species included in a list which is published pursuant to paragraph (1) and which is in effect at the time of such review; and

(B) determine on the basis of such review whether any such species should—

(i) be removed from such list;

(ii) be changed in status from an endangered species to a threatened species; or

(iii) be changed in status from a threatened species to an endangered species.

Each determination under subparagraph (B) shall be made in accordance with the provisions of subsection (a) and (b).

(d) PROTECTIVE REGULATIONS.—Whenever any species is listed as a threatened species pursuant to subsection (c) of this section, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2) in the case of plants, with respect to endangered species; except that with respect to the taking of resident species of fish or wildlife, such regulations shall apply in any State which has entered into a cooperative agreement pursuant to section 6(c) of this Act only to the extent that such regulations have also been adopted by such State.

(e) SIMILARITY OF APPEARANCE CASES.—The Secretary may, by regulation of commerce or taking, and to the extent he deems advisable, treat any species as an endangered species or threatened species even though it is not listed pursuant to section 4 of this Act if he finds that—

(A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species;

(B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and

(C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this Act.

(f)(1) RECOVERY PLANS.—The Secretary shall develop and implement plans (hereinafter in this subsection referred to as “recovery plans”) for the conservation and survival of endangered species and threatened species listed pursuant to this section, unless he finds that such a plan will not promote the conservation of the species. The Secretary, in development and implementing recovery plans, shall, to the maximum extent practicable—

(A) give priority to those endangered species or threatened species, without regard to taxonomic classification, that are most likely to benefit from such plans, particularly those spe-

cies that are, or may be, in conflict with construction or other development projects or other forms of economic activity;¹

(B) incorporate in each plan—

(i) a description of such site-specific management actions as may be necessary to achieve the plan's goal for the conservation and survival of the species;

(ii) objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of this section, that the species be removed from the list; and

(iii) estimates of the time required and the cost to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal.

(2) The Secretary, in developing and implementing recovery plans, may procure the services of appropriate public and private agencies and institutions and other qualified persons. Recovery teams appointed pursuant to this subsection shall not be subject to the Federal Advisory Committee Act.

(3) The Secretary shall report every two years to the Committee on Environment and Public Works of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives on the status of efforts to develop and implement recovery plans for all species listed pursuant to this section and on the status of all species for which such plans have been developed.

(4) The Secretary shall, prior to final approval of a new or revised recovery plan, provide public notice and an opportunity for public review and comment on such plan. The Secretary shall consider all information presented during the public comment period prior to approval of the plan.

(5) Each Federal agency shall, prior to implementation of a new or revised recovery plan, consider all information presented during the public comment period under paragraph (4).

(g) MONITORING.—(1) The Secretary shall implement a system in cooperation with the States to monitor effectively for not less than five years the status of all species which have recovered to the point at which the measures provided pursuant to this Act are no longer necessary and which, in accordance with the provisions of this section, have been removed from either of the lists published under subsection (c).

(2) The Secretary shall make prompt use of the authority under paragraph 7¹ of subsection (b) of this section to prevent a significant risk to the well being of any such recovered species.

(h) AGENCY GUIDELINES.—The Secretary shall establish, and publish in the Federal Register, agency guidelines to insure that the purposes of this section are achieved efficiently and effectively. Such guidelines shall include, but are not limited to—

(1) procedures for recording the receipt and the disposition of petitions submitted under subsection (b)(3) of this section;

(2) criteria for making the findings required under such subsection with respect to petitions;

¹ So in law. Probably should be “; and”.

¹ So in original. Probably should be paragraph “(7)”.

(3) a ranking system to assist in the identification of species that should receive priority review under subsection (a)(1) of the section; and

(4) a system for developing and implementing, on a priority basis, recovery plans under subsection (f) of this section. The Secretary shall provide to the public notice of, and opportunity to submit written comments on, any guideline (including any amendment thereto) proposed to be established under this subsection.

(i) If, in the case of any regulation proposed by the Secretary under the authority of this section, a State agency to which notice thereof was given in accordance with subsection (b)(5)(A)(ii) files comments disagreeing with all or part of the proposed regulation, and the Secretary issues a final regulation which is in conflict with such comments, or if the Secretary fails to adopt a regulation pursuant to an action petitioned by a State agency under subsection (b)(3), the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.

LAND ACQUISITION

SEC. 5. (a) **[16 U.S.C. 1534] PROGRAM.**—The Secretary, and the Secretary of Agriculture with respect to the National Forest System, shall establish and implement a program to conserve fish, wildlife, and plants, including those which are listed as endangered species or threatened species pursuant to section 4 of this Act. To carry out such a program, the appropriate Secretary—

(1) shall utilize the land acquisition and other authority under the Fish and Wildlife Act of 1956, as amended, the Fish and Wildlife Coordination Act, as amended, and the Migratory Bird Conservation Act, as appropriate; and

(2) is authorized to acquire by purchase, donation, or otherwise, lands, waters, or interest therein, and such authority shall be in addition to any other land acquisition vested in him.

(b) **ACQUISITIONS.**—Funds made available pursuant to the Land and Water Conservation Fund Act of 1965, as amended, may be used for the purpose of acquiring lands, waters, or interests therein under subsection (a) of this section.

COOPERATION WITH THE STATES

SEC. 6. **[16 U.S.C. 1535] (a) GENERAL.**—In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the States. Such cooperation shall include consultation with the States concerned before acquiring any land or water, or interest therein, for the purpose of conserving any endangered species or threatened species.

(b) **MANAGEMENT AGREEMENTS.**—The Secretary may enter into agreements with any State for the administration and management of any area established for the conservation of endangered species or threatened species. Any revenues derived from the administration of such areas under these agreements shall be subject to the

provisions of section 401 of the Act of June 15, 1935 (49 Stat. 383; 16 U.S.C. 715s).

(c)(1) COOPERATIVE AGREEMENTS.—In furtherance of the purposes of this Act, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this Act. Unless he determines, pursuant to this paragraph, that the State program is not in accordance with this Act, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species and threatened species, the Secretary must find, and annually thereafter reconfirm such finding, that under the State program—

(A) authority resides in the State agency of conserve resident species of fish or wildlife determined by the State agency or the Secretary to be endangered or threatened;

(B) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this Act, for all resident species of fish or wildlife in the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

(C) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of fish and wildlife;

(D) the State agency is authorized to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident endangered or threatened species of fish or wildlife; and

(E) provision is made for public participation in designating resident species of fish or wildlife as endangered or threatened; or

that under the State program—

(i) the requirements set forth in subparagraphs (C), (D), and (E) of this paragraph are complied with, and

(ii) plans are included under which immediate attention will be given to those resident species of fish and wildlife which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to clause (i) and this clause shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1) with respect to the taking of any resident endangered or threatened species.

(2) In furtherance of the purposes of this Act, the Secretary is authorized to enter into a cooperative agreement in accordance

with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species of plants. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this Act. Unless he determines, pursuant to this paragraph, that the State program is not in accordance with this Act, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species of plants and threatened species of plants, the Secretary must find, and annually thereafter reconfirm such findings, that under the State program—

(A) authority resides in the State agency to conserve resident species of plants determined by the State agency or the Secretary to be endangered or threatened;

(B) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this Act, for all resident species of plants in the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

(C) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of plants; and

(D) provision is made for public participation in designating resident species of plants as endangered or threatened; or that under the State program—

(i) the requirements set forth in subparagraphs (C) and (D) of this paragraph are complied with, and

(ii) plans are included under which immediate attention will be given to those resident species of plants which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to clause (i) and this clause shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1) with respect to the taking of any resident endangered or threatened species.

(d) ALLOCATION OF FUNDS.—(1) The Secretary is authorized to provide financial assistance to any State, through its respective State agency, which has entered into a cooperative agreement pursuant to subsection (c) of this section to assist in development of programs for the conservation of endangered and threatened species or to assist in monitoring the status of candidate species pursuant to subparagraph (C) of section 4(b)(3) and recovered species pursuant to section 4(g). The Secretary shall allocate each annual appropriation made in accordance with the provisions of subsection (i) of this section to such States based on consideration of—

(A) the international commitments of the United States to protect endangered species or threatened species;

(B) the readiness of a State to proceed with a conservation program consistent with the objectives and purposes of this Act;

(C) the number of endangered species and threatened species within a State;

(D) the potential for restoring endangered species and threatened species within a State;

(E) the relative urgency to initiate a program to restore and protect an endangered species or threatened species in terms of survival of the species;

(F) the importance of monitoring the status of candidate species within a State to prevent a significant risk to the well being of any such species; and

(G) the importance of monitoring the status of recovered species within a State to assure that such species do not return to the point at which the measures provided pursuant to this Act are again necessary.

So much of the annual appropriation made in accordance with provisions of subsection (i) of this section allocated for obligation to any State for any fiscal year as remains unobligated at the close thereof is authorized to be made available to that State until the close of the succeeding fiscal year. Any amount allocated to any State which is unobligated at the end of the period during which it is available for expenditure is authorized to be made available for expenditure by the Secretary in conducting programs under this section.

(2) Such cooperative agreements shall provide for (A) the actions to be taken by the Secretary and the States; (B) the benefits that are expected to be derived in connection with the conservation of endangered or threatened species; (C) the estimated cost of these actions; and (D) the share of such costs to be bore by the Federal Government and by the States; except that—

(i) the Federal share of such program costs shall not exceed 75 percent of the estimated program cost stated in the agreement; and

(ii) the Federal share may be increased to 90 percent whenever two or more States having a common interest in one or more endangered or threatened species, the conservation of which may be enhanced by cooperation of such States, enter jointly into agreement with the Secretary.

The Secretary may, in his discretion, and under such rules and regulations as he may prescribe, advance funds to the State for financing the United States pro rata share agreed upon in the cooperative agreement. For the purposes of this section, the non-Federal share may, in the discretion of the Secretary, be in the form of money or real property, the value of which will be determined by the Secretary whose decision shall be final.

(e) REVIEW OF STATE PROGRAMS.—Any action taken by the Secretary under this section shall be subject to his periodic review at no greater than annual intervals.

(f) CONFLICTS BETWEEN FEDERAL AND STATE LAWS.—Any State law or regulation which applies with respect to the importation or

exportation of, or interstate or foreign commerce in, endangered species or threatened species is void to the extent that it may effectively (1) permit what is prohibited by this Act or by any regulation which implements this Act, or (2) prohibit what is authorized pursuant to an exemption or permit provided for in this Act or in any regulation which implements this Act. This Act shall not otherwise be construed to void any State law or regulation which is intended to conserve migratory, resident, or introduced fish or wildlife, or to permit or prohibit sale of such fish or wildlife. Any State law or regulation respecting the taking of an endangered species or threatened species may be more restrictive than the exemptions or permits provided for in this Act or in any regulation which implements this Act but not less restrictive than the prohibitions so defined.

(g) TRANSITION.—(1) For purposes of this subsection, the term “establishment period” means, with respect to any State, the period beginning on the date of enactment of this Act and ending on whichever of the following dates first occurs: (A) the date of the close of the 120-day period following the adjournment of the first regular session of the legislative of such State which commences after such date of enactment, or (B) the date of the close of the 15-month period following such date of enactment.

(2) The prohibitions set forth in or authorized pursuant to sections 4(d) and 9(a)(1)(B) of this Act shall not apply with respect to the taking of any resident endangered species or threatened species (other than species listed in Appendix I to the Convention or otherwise specifically covered by any other treaty or Federal law) within any State—

(A) which is then a party to a cooperative agreement with the Secretary pursuant to section 6(c) of this Act (except to the extent that the taking of any such species is contrary to the law of such State); or

(B) except for any time within the establishment period when—

(i) the Secretary applies such prohibition to such species at the request of the State, or

(ii) the Secretary applies such prohibition after he finds, and publishes his finding, that an emergency exists posing a significant risk to the well-being of such species and that the prohibition must be applied to protect such species. The Secretary’s finding and publication may be made without regard to the public hearing or comment provisions of section 553 of title 5, United States Code, or any other provision of this Act; but such prohibition shall expire 90 days after the date of its imposition unless the Secretary further extends such prohibition by publishing notice and a statement of justification of such extension.

(h) REGULATIONS.—The Secretary is authorized to promulgate such regulations as may be appropriate to carry out the provisions of this section relating to financial assistance to States.

(i) APPROPRIATIONS.—(1) To carry out the provisions of this section for fiscal years after September 30, 1988, there shall be deposited into a special fund known as the cooperative endangered species conservation fund, to be administered by the Secretary, an

amount equal to five percent of the combined amounts covered each fiscal year into the Federal aid to wildlife restoration fund under section 3 of the Act of September 2, 1937, and paid, transferred, or otherwise credited each fiscal year to the Sport Fishing Restoration Account established under 1016 of the Act of July 18, 1984.

(2) Amounts deposited into the special fund are authorized to be appropriated annually and allocated in accordance with subsection (d) of this section.

INTERAGENCY COOPERATION

SEC. 7. [16 U.S.C. 1536] (a) FEDERAL AGENCY ACTIONS AND CONSULTATIONS.—(1) The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act.

(2) Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an “agency action”) is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.

(3) Subject to such guidelines as the Secretary may establish, a Federal agency shall consult with the Secretary on any prospective agency action at the request of, and in cooperation with, the prospective permit or license applicant if the applicant has reason to believe that an endangered species or a threatened species may be present in the area affected by his project and that implementation of such action will likely affect such species.

(4) Each Federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under section 4 or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. This paragraph does not require a limitation on the commitment of resources as described in subsection (d).

(b) OPINION OF SECRETARY.—(1)(A) Consultation under subsection (a)(2) with respect to any agency action shall be concluded within the 90-day period beginning on the date on which initiated or, subject to subparagraph (B), within such other period of time as is mutually agreeable to the Secretary and the Federal agency.

(B) In the case of an agency action involving a permit or license applicant, the Secretary and the Federal agency may not mutually agree to conclude consultation within a period exceeding 90 days unless the Secretary, before the close of the 90th day referred to in subparagraph (A)—

(i) if the consultation period proposed to be agreed to will end before the 150th day after the date on which consultation was initiated, submits to the applicant a written statement setting forth—

(I) the reasons why a longer period is required;

(II) the information that is required to complete the consultation; and

(III) the estimated date on which consultation will be completed; or

(ii) if the consultation period proposed to be agreed to will end 150 or more days after the date on which consultation was initiated, obtains the consent of the applicant to such period.

The Secretary and the Federal agency may mutually agree to extend a consultation period established under the preceding sentence if the Secretary, before the close of such period, obtains the consent of the applicant to the extension.

(2) Consultation under subsection (a)(3) shall be concluded within such period as is agreeable to the Secretary, the Federal agency, and the applicant concerned.

(3)(A) Promptly after conclusion of consultation under paragraph (2) or (3) of subsection (a), the Secretary shall provide to the Federal agency and the applicant, if any, a written statement setting forth the Secretary's opinion, and a summary of the information on which the opinion is based, detailing how the agency action affects the species or its critical habitat. If jeopardy or adverse modification is found, the Secretary shall suggest those reasonable and prudent alternatives which he believes would not violate subsection (a)(2) and can be taken by the Federal agency or applicant in implementing the agency action.

(B) Consultation under subsection (a)(3), and an opinion based by the Secretary incident to such consultation, regarding an agency action shall be treated respectively as a consultation under subsection (a)(2), and as an opinion issued after consultation under such subsection, regarding that action if the Secretary reviews the action before it is commenced by the Federal agency and finds, and notifies such agency, that no significant changes have been made with respect to the action and that no significant change has occurred regarding the information used during the initial consultation.

(4) If after consultation under subsection (a)(2) of this section, the Secretary concludes that—

(A) the agency action will not violate such subsection, or offers reasonable and prudent alternatives which the Secretary believes would not violate such subsection;

(B) the taking of an endangered species or a threatened species incidental to the agency action will not violate such subsection; and

(C) if an endangered species or threatened species of a marine mammal is involved, the taking is authorized pursuant to section 101(a)(5) of the Marine Mammal Protection Act of 1972; the Secretary shall provide the Federal agency and the applicant concerned, if any, with a written statement that—

(i) specifies the impact of such incidental taking on the species,

(ii) specifies those reasonable and prudent measures that the Secretary considers necessary or appropriate to minimize such impact,

(iii) in the case of marine mammals, specifies those measures that are necessary to comply with section 101(a)(5) of the Marine Mammal Protection Act of 1972 with regard to such taking, and

(iv) sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency or applicant (if any), or both, to implement the measures specified under clauses (ii) and (iii).

(c) **BIOLOGICAL ASSESSMENT.**—(1) To facilitate compliance with the requirements of subsection (a)(2) each Federal agency shall, with respect to any agency action of such agency for which no contract for construction has been entered into and for which no construction has begun on the date of enactment of the Endangered Species Act Amendments of 1978, request of the Secretary information whether any species which is listed or proposed to be listed may be present in the area of such proposed action. If the Secretary advises, based on the best scientific and commercial data available, that such species may be present, such agency shall conduct a biological assessment for the purpose of identifying any endangered species or threatened species which is likely to be affected by such action. Such assessment shall be completed within 180 days after the date on which initiated (or within such other period as in mutually agreed to by the Secretary and such agency, except that if a permit or license applicant is involved, the 180-day period may not be extended unless such agency provides the applicant, before the close of such period, with a written statement setting forth the estimated length of the proposed extension and the reasons therefor) and, before any contract for construction is entered into and before construction is begun with respect to such action. Such assessment may be undertaken as part of a Federal agency's compliance with the requirements of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

(2) Any person who may wish to apply for an exemption under subsection (g) of this section for that action may conduct a biological assessment to identify any endangered species or threatened species which is likely to be affected by such action. Any such biological assessment must, however, be conducted in cooperation with the Secretary and under the supervision of the appropriate Federal agency.

(d) **LIMITATION ON COMMITMENT OF RESOURCES.**—After initiation of consultation required under subsection (a)(2), the Federal agency and the permit or license applicant shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate subsection (a)(2).

(e)(1) **ESTABLISHMENT OF COMMITTEE.**—There is established a committee to be known as the Endangered Species Committee (hereinafter in this section referred to as the "Committee").

(2) The Committee shall review any application submitted to it pursuant to this section and determine in accordance with sub-

section (h) of this section whether or not to grant an exemption from the requirements of subsection (a)(2) of this action for the action set forth in such application.

(3) The Committee shall be composed of seven members as follows:

- (A) The Secretary of Agriculture.
- (B) The Secretary of the Army.
- (C) The Chairman of the Council of Economic Advisors.
- (D) The Administrator of the Environmental Protection Agency. Agency.¹
- (E) The Secretary of the Interior.
- (F) The Administrator of the National Oceanic and Atmospheric Administration.

(G) The President, after consideration of any recommendations received pursuant to subsection (g)(2)(B) shall appoint one individual from each affected State, as determined by the Secretary, to be a member of the Committee for the consideration of the application for exemption for an agency action with respect to which such recommendations are made, not later than 30 days after an application is submitted pursuant to this section.

(4)(A) Members of the Committee shall receive no additional pay on account of their service on the Committee.

(B) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code¹

(5)(A) Five members of the Committee or their representatives shall constitute a quorum for the transaction of any function of the Committee, except that, in no case shall any representative be considered in determining the existence of a quorum for the transaction of any function of the Committee if that function involves a vote by the Committee on any matter before the Committee.

(B) The Secretary of the Interior shall be the Chairman of the Committee.

(C) The Committee shall meet at the call of the Chairman or five of its members.

(D) All meetings and records of the Committee shall be open to the public.

(6) Upon request of the Committee, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to the Committee to assist it in carrying out its duties under this section.

(7)(A) The Committee may for the purpose of carrying out its duties under this section hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Committee deems advisable.

¹So in law. At the end of section 7(e)(3)(D) of the Endangered Species Act of 1973, the second "Agency." should had been stricken.

¹So in law. At the end of section 7(e)(4)(B) of the Endangered Species Act of 1973, the period at end of the paragraph was omitted.

(B) When so authorized by the Committee, any member or agent of the Committee may take any action which the Committee is authorized to take by this paragraph.

(C) Subject to the Privacy Act, the Committee may secure directly from any Federal agency information necessary to enable it to carry out its duties under this section. Upon request of the Chairman of the Committee, the head of such Federal agency shall furnish such information to the Committee.

(D) The Committee may use the United States mails in the same manner and upon the same conditions as a Federal agency.

(E) The Administrator of General Services shall provide to the Committee on a reimbursable basis such administrative support services as the Committee may request.

(8) In carrying out its duties under this section, the Committee may promulgate and amend such rules, regulations, and procedures, and issue and amend such orders as it deems necessary.

(9) For the purpose of obtaining information necessary for the consideration of an application for an exemption under this section the Committee may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

(10) In no case shall any representative, including a representative of a member designated pursuant to paragraph (3)(G) of this subsection, be eligible to cast a vote on behalf of any member.

(f) REGULATIONS.—Not later than 90 days after the date of enactment of the Endangered Species Act Amendments of 1978, the Secretary shall promulgate regulations which set forth the form and manner in which applications for exemption shall be submitted to the Secretary and the information to be contained in such applications. Such regulations shall require that information submitted in an application by the head of any Federal agency with respect to any agency action include but not be limited to—

(1) a description of the consultation process carried out pursuant to subsection (a)(2) of this section between the head of the Federal agency and the Secretary; and

(2) a statement describing why such action cannot be altered or modified to conform with the requirements of subsection (a)(2) of this section.

(g) APPLICATION FOR EXEMPTION AND REPORT TO THE COMMITTEE.—(1) A Federal agency, the Governor of the State in which an agency action will occur, if any, or a permit or license applicant may apply to the Secretary for an exemption for an agency action of such agency if, after consultation under subsection (a)(2), the Secretary's opinion under subsection (b) indicates that the agency action would violate subsection (a)(2). An application for an exemption shall be considered initially by the Secretary in the manner provided for in this subsection, and shall be considered by the Committee for a final determination under subsection (h) after a report is made pursuant to paragraph (5). The applicant for an exemption shall be referred to as the "exemption applicant" in this section.

(2)(A) An exemption applicant shall submit a written application to the Secretary, in a form prescribed under subsection (f), not later than 90 days after the completion of the consultation process; except that, in the case of any agency action involving a permit or

license applicant, such application shall be submitted not later than 90 days after the date on which the Federal agency concerned takes final agency action with respect to the issuance of the permit or license. For purposes of the preceding sentence, the term "final agency action" means (i) a disposition by an agency with respect to the issuance of a permit or license that is subject to administrative review, whether or not such disposition is subject to judicial review; or (ii) if administrative review is sought with respect to such disposition, the decision resulting after such review. Such application shall set forth the reasons why the exemption applicant considers that the agency action meets the requirements for an exemption under this subsection.

(B) Upon receipt of an application for exemption for an agency action under paragraph (1), the Secretary shall promptly (i) notify the Governor of each affected State, if any, as determined by the Secretary, and request the Governors so notified to recommend individuals to be appointed to the Endangered Species Committee for consideration of such application; and (ii) publish notice of receipt of the application in the Federal Register, including a summary of the information contained in the application and a description of the agency action with respect to which the application for exemption has been filed.

(3) The Secretary shall within 20 days after the receipt of an application for exemption, or within such other period of time as is mutually agreeable to the exemption applicant and the Secretary—

(A) determine that the Federal agency concerned and the exemption applicant have—

(i) carried out the consultation responsibilities described in subsection (a) in good faith and made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to the proposed agency action which would not violate subsection (a)(2);

(ii) conducted any biological assessment required by subsection (c); and

(iii) to the extent determinable within the time provided herein, refrained from making any irreversible or irretrievable commitment of resources prohibited by subsection (d); or

(B) deny the application for exemption because the Federal agency concerned or the exemption applicant have not met the requirements set forth in subparagraph (A)(i), (ii), and (iii).

The denial of an application under subparagraph (B) shall be considered final agency action for purposes of chapter 7 of title 5, United States Code.

(4) If the Secretary determines that the Federal agency concerned and the exemption applicant have met the requirements set forth in paragraph (3)(A) (i), (ii) and (iii) he shall, in consultation with the Members of the Committee, hold a hearing on the application for exemption in accordance with sections 554, 555, and 556 (other than subsection (b) (1) and (2) thereof) of title 5, United States Code, and prepare the report to be submitted pursuant to paragraph (5).

(5) Within 140 days after making the determinations under paragraph (3) or within such other period of time as in mutually agreeable to the exemption applicant and the Secretary, the Secretary shall submit to the Committee a report discussing—

(A) the availability and reasonable and prudent alternatives to the agency action, and the nature and extent of the benefits of the agency action and of alternative courses of action consistent with conserving the species of the critical habitat;

(B) a summary of the evidence concerning whether or not the agency action is in the public interest and is of national or regional significance;

(C) appropriate reasonable mitigation and enhancement measures which should be considered by the Committee; and

(D) whether the Federal agency concerned and the exemption applicant refrained from making any irreversible or irretrievable commitment of resources prohibited by subsection (d).

(6) To the extent practicable within the time required for action under subsection (g) of this section, and except to the extent inconsistent with the requirements of this section, the consideration of any application for an exemption under this section and the conduct of any hearing under this subsection shall be in accordance with sections 554, 555, and 556 (other than subsection (b)(3) of section 556) of title 5, United States Code.

(7) Upon request of the Secretary, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to the Secretary to assist him in carrying out his duties under this section.

(8) All meetings and records resulting from activities pursuant to this subsection shall be open to the public.

(h) EXEMPTION.—(1) The Committee shall make a final determination whether or not to grant an exemption within 30 days after receiving the report of the Secretary pursuant to subsection (g)(5). The Committee shall grant an exemption from the requirements of subsection (a)(2) for an agency action if, by a vote of not less than five of its members voting in person—

(A) it determines on the record, based on the report of the Secretary, the record of the hearing held under subsection (g)(4), and on such other testimony or evidence as it may receive, that—

(i) there are no reasonable and prudent alternatives to the agency action;

(ii) the benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest;

(iii) the action is of regional or national significance; and

(iv) neither the Federal agency concerned nor the exemption applicant made any irreversible or irretrievable commitment of resources prohibited by subsection (d); and

(B) it establishes such reasonable mitigation and enhancement measures, including, but not limited to, live propagation, transplantation, and habitat acquisition and improvement, as

are necessary and appropriate to minimize the adverse effects of the agency action upon the endangered species, threatened species, or critical habitat concerned.

Any final determination by Committee under this subsection shall be considered final agency action for purposes of chapter 7 of title 5 of the United States Code.

(2)(A) Except as provided in subparagraph (B), an exemption for an agency action granted under paragraph (1) shall constitute a permanent exemption with respect to all endangered or threatened species for the purposes of completing such agency action—

(i) regardless whether the species was identified in the biological assessment; and

(ii) only if a biological assessment has been conducted under subsection (c) with respect to such agency action.

(B) An exemption shall be permanent under subparagraph (A) unless—

(i) the Secretary finds, based on the best scientific and commercial data available, that such exemption would result in the extinction of a species that was not the subject of consultation under subsection (a)(2) or was not identified in any biological assessment conducted under subsection (c), and

(ii) the Committee determines within 60 days after the date of the Secretary's finding that the exemption should not be permanent.

If the Secretary makes a finding described in clause (i), the Committee shall meet with respect to the matter within 30 days after the date of the finding.

(i) REVIEW BY SECRETARY OF STATE.—Notwithstanding any other provision of this Act, the Committee shall be prohibited from considering for exemption any application made to it, if the Secretary of State, after a review of the proposed agency action and its potential implications, and after hearing, certifies, in writing, to the Committee within 60 days of any application made under this section that the granting of any such exemption and the carrying out of such action would be in violation of an international treaty obligation or other international obligation of the United States. The Secretary of State shall, at the time of such certification, publish a copy thereof in the Federal Register.

(j) Notwithstanding any other provision of this Act, the Committee shall grant an exemption for any agency action if the Secretary of Defense finds that such exemption is necessary for reasons of national security.

(k) SPECIAL PROVISIONS.—An exemption decision by the Committee under this section shall not be a major Federal action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.): *Provided*, That an environmental impact statement which discusses the impacts upon endangered species or threatened species or their critical habitats shall have been previously prepared with respect to any agency action exempted by such order.

(l) COMMITTEE ORDERS.—(1) If the Committee determines under subsection (h) that an exemption should be granted with respect to any agency action, the Committee shall issue an order granting the exemption and specifying the mitigation and enhance-

ment measures established pursuant to subsection (h) which shall be carried out and paid for by the exemption applicant in implementing the agency action. All necessary mitigation and enhancement measures shall be authorized prior to the implementing of the agency action and funded concurrently with all other project features.

(2) The applicant receiving such exemption shall include the costs of such mitigation and enhancement measures within the overall costs of continuing the proposed action. Notwithstanding the preceding sentence the costs of such measures shall not be treated as project costs for the purpose of computing benefit-cost or other ratios for the proposed action. Any applicant may request the Secretary to carry out such mitigation and enhancement measures. The costs incurred by the Secretary in carrying out any such measures shall be paid by the applicant receiving the exemption. No later than one year after the granting of an exemption, the exemption applicant shall submit to the Council on Environmental Quality a report describing its compliance with the mitigation and enhancement measures prescribed by this section. Such report shall be submitted annually until all such mitigation and enhancement measures have been completed. Notice of the public availability of such reports shall be published in the Federal Register by the Council on Environmental Quality.

(m) NOTICE.—The 60-day notice requirement of section 11(g) of this Act shall not apply with respect to review of any final determination of the Committee under subsection (h) of this section granting an exemption from the requirements of subsection (a)(2) of this section.

(n) JUDICIAL REVIEW.—Any person, as defined by section 3(13) of this Act, may obtain judicial review, under chapter 7 of title 5 of the United States Code, of any decision of the Endangered Species Committee under subsection (h) in the United States Court of Appeals for (1) any circuit wherein the agency action concerned will be, or is being, carried out, or (2) in any case in which the agency action will be, or is being, carried out outside of any circuit, the District of Columbia, by filing in such court within 90 days after the date of issuance of the decision, a written petition for review. A copy of such petition shall be transmitted by the clerk of the court to the Committee and the Committee shall file in the court the record in the proceeding, as provided in section 2112, of title 28, United States Code. Attorneys designated by the Endangered Species Committee may appear for, and represent the Committee in any action for review under this subsection.

(o) EXEMPTION AS PROVIDING EXCEPTION ON TAKING OF ENDANGERED SPECIES.—Notwithstanding sections 4(d) and 9(a)(1)(B) and (C) of this Act, sections 101 and 102 of the Marine Mammal Protection Act of 1972, or any regulation promulgated to implement any such section—

(1) any action for which an exemption is granted under subsection (h) of this section shall not be considered to be a taking of any endangered species or threatened species with respect to any activity which is necessary to carry out such action; and

(2) any taking that is in compliance with the terms and conditions specified in a written statement provided under subsection (b)(4)(iv) of this section shall not be considered to be a prohibited taking of the species concerned.

(p) EXEMPTIONS IN PRESIDENTIALLY DECLARED DISASTER AREAS.—In any area which has been declared by the President to be a major disaster area under the Disaster Relief and Emergency Assistance Act, the President is authorized to make the determinations required by subsections (g) and (h) of this section for any project for the repair or replacement of a public facility substantially as it existed prior to the disaster under section 405 or 406 of the Disaster Relief and Emergency Assistance Act, and which the President determines (1) is necessary to prevent the recurrence of such a natural disaster and to reduce the potential loss of human life, and (2) to involve an emergency situation which does not allow the ordinary procedures of this section to be followed. Notwithstanding any other provision of this section, the Committee shall accept the determinations of the President under this subsection.

INTERNATIONAL COOPERATION

SEC. 8. [16 U.S.C. 1537] (a) FINANCIAL ASSISTANCE.—As a demonstration of the commitment of the United States to the worldwide protection of endangered species and threatened species, the President may, subject to the provisions of section 1415 of the Supplemental Appropriation Act, 1953 (31 U.S.C. 724), use foreign currencies accruing to the United States Government under the Agricultural Trade Development and Assistance Act of 1954 or any other law to provide to any foreign country (with its consent) assistance in the development and management of programs in that country which the Secretary determines to be necessary or useful for the conservation of any endangered species or threatened species listed by the Secretary pursuant to section 4 of this Act. The President shall provide assistance (which includes, but is not limited to, the acquisition, by lease or otherwise, of lands, waters, or interests therein) to foreign countries under this section under such terms and conditions as he deems appropriate. Whenever foreign currencies are available for the provision of assistance under this section, such currencies shall be used in preference to funds appropriated under the authority of section 15 of this Act.

(b) ENCOURAGEMENT OF FOREIGN PROGRAMS.—In order to carry out further the provisions of this Act, the Secretary, through the Secretary of State shall encourage—

(1) foreign countries to provide for the conservation of fish or wildlife and plants including endangered species and threatened species listed pursuant to section 4 of this Act;

(2) the entering into of bilateral or multilateral agreements with foreign countries to provide for such conservation; and

(3) foreign persons who directly or indirectly take fish or wildlife or plants in foreign countries or on the high seas for importation into the United States for commercial or other purposes to develop and carry out with such assistance as he may provide, conservation practices designed to enhance such fish or wildlife or plants and their habitat.

(c) PERSONNEL.—After consultation with the Secretary of State, the Secretary may—

(1) assign or otherwise make available any officer or employee of his department for the purpose of cooperating with foreign countries and international organizations in developing personnel resources and programs which promote the conservation of fish or wildlife or plants, and

(2) conduct or provide financial assistance for the educational training of foreign personnel, in this country or abroad, in fish, wildlife, or plant management, research and law enforcement and to render professional assistance abroad in such matters.

(d) INVESTIGATIONS.—After consultation with the Secretary of State and the Secretary of the Treasury, as appropriate, the Secretary may conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the purposes of this Act.

CONVENTION IMPLEMENTATION

SEC. 8A. [16 U.S.C. 1537a] (a) MANAGEMENT AUTHORITY AND SCIENTIFIC AUTHORITY.—The Secretary of the Interior (hereinafter in this section referred to as the “Secretary”) is designated as the Management Authority and the Scientific Authority for purposes of the Convention and the respective functions of each such Authority shall be carried out through the United States Fish and Wildlife Service.

(b) MANAGEMENT AUTHORITY FUNCTIONS.—The Secretary shall do all things necessary and appropriate to carry out the functions of the Management Authority under the Convention.

(c) SCIENTIFIC AUTHORITY FUNCTIONS.—(1) The Secretary shall do all things necessary and appropriate to carry out the functions of the Scientific Authority under the Convention.

(2) The Secretary shall base the determinations and advice given by him under Article IV of the Convention with respect to wildlife upon the best available biological information derived from professionally accepted wildlife management practices; but is not required to make, or require any State to make, estimates of population size in making such determinations or giving such advice.

(d) RESERVATIONS BY THE UNITED STATES UNDER CONVENTION.—If the United States votes against including any species in Appendix I or II of the Convention and does not enter a reservation pursuant to paragraph (3) of Article XV of the Convention with respect to that species, the Secretary of State, before the 90th day after the last day on which such a reservation could be entered, shall submit to the Committee on Merchant Marine and Fisheries of the House of Representatives, and to the Committee on the Environment and Public Works of the Senate, a written report setting forth the reasons why such a reservation was not entered.

(e) WILDLIFE PRESERVATION IN WESTERN HEMISPHERE.—(1) The Secretary of the Interior (hereinafter in this subsection referred to as the “Secretary”), in cooperation with the Secretary of State, shall act on behalf of, and represent, the United States in all regards as required by the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere (56 Stat. 1354,

T.S. 982, hereinafter in this subsection referred to as the “Western Convention”). In the discharge of these responsibilities, the Secretary and the Secretary of State shall consult with the Secretary of Agriculture, the Secretary of Commerce, and the heads of other agencies with respect to matters relating to or affecting their areas of responsibility.

(2) The Secretary and the Secretary of State shall, in cooperation with the contracting parties to the Western Convention and, to the extent feasible and appropriate, with the participation of State agencies, take such steps as are necessary to implement the Western Convention. Such steps shall include, but not be limited to—

(A) cooperation with contracting parties and international organizations for the purpose of developing personnel resources and programs that will facilitate implementation of the Western Convention;

(B) identification of those species of birds that migrate between the United States and other contracting parties, and the habitats upon which those species depend, and the implementation of cooperative measures to ensure that such species will not become endangered or threatened; and

(C) identification of measures that are necessary and appropriate to implement those provisions of the Western Convention which address the protection of wild plants.

(3) No later than September 30, 1985, the Secretary and the Secretary of State shall submit a report to Congress describing those steps taken in accordance with the requirements of this subsection and identifying the principal remaining actions yet necessary for comprehensive and effective implementation of the Western Convention.

(4) The provisions of this subsection shall not be construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate resident fish or wildlife under State law or regulations.

PROHIBITED ACTS

SEC. 9. [16 U.S.C. 1538] (a) GENERAL.—(1) Except as provided in sections 6(g)(2) and 10 of this Act, with respect to any endangered species of fish or wildlife listed pursuant to section 4 of this Act it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from the United States;

(B) take any such species within the United States or the territorial sea of the United States;

(C) take any such species upon the high seas;

(D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C);

(E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(F) sell or offer for sale in interstate or foreign commerce any such species; or

(G) violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act.

(2) Except as provided in sections 6(g)(2) and 10 of this Act, with respect to any endangered species of plants listed pursuant to section 4 of this Act, it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from, the United States;

(B) remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any such area; or remove cut, dig up, or damage or destroy any such species on any other area in knowing violation of any law or regulation of any state or in the course of any violation of a state criminal trespass law;

(C) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(D) sell or offer for sale in interstate or foreign commerce any such species; or

(E) violate any regulation pertaining to such species or to any threatened species of plants listed pursuant to section 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act.

(b)(1) SPECIES HELD IN CAPTIVITY OR CONTROLLED ENVIRONMENT.—The provisions of subsections (a)(1)(A) and (a)(1)(G) of this section shall not apply to any fish or wildlife which was held in captivity or in a controlled environment on (A) December 28, 1973, or (B) the date of the publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant to subsection (c) of section 4 of this Act: *Provided*, That such holding and any subsequent holding or use of the fish or wildlife as not in the course of a commercial activity. With respect to any act prohibited by subsections (a)(1)(A) and (a)(1)(G) of this section which occurs after a period of 180 days from (i) December 28, 1973, or (ii) the date of publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant to subsection (c) of section 4 of this Act, there shall be a rebuttable presumption that the fish or wildlife involved in such act is not entitled to the exemption contained in this subsection.

(2)(A) The provisions of subsections (a)(1) shall not apply to—

(i) any raptor legally held in captivity or in a controlled environment on the effective date of the Endangered Species Act Amendments of 1978; or

(ii) any progeny of any raptor described in clause (i); until such time as any such raptor or progeny is intentionally returned to a wild state.

(B) Any person holding any raptor or progeny described in subparagraph (A) must be able to demonstrate that the raptor or progeny does, in fact, qualify under the provisions of this paragraph, and shall maintain and submit to the Secretary, on request, such inventories, documentation, and records as the Secretary may by

regulation require as being reasonably appropriate to carry out the purposes of this paragraph. Such requirements shall not unnecessarily duplicate the requirements of other rules and regulations promulgated by the Secretary.

(c) VIOLATION OF CONVENTION.—(1) It is unlawful for any person subject to the jurisdiction of the United States to engage in any trade in any specimens contrary to the provisions of the Convention, or to possess any specimens traded contrary to the provisions of the Convention, including the definitions of terms in article I thereof.

(2) Any importation into the United States of fish or wildlife shall, if—

(A) such fish or wildlife is not an endangered species listed pursuant to section 4 of this Act but is listed in Appendix II of the Convention;

(B) the taking and exportation of such fish or wildlife is not contrary to the provisions of the Convention and all other applicable requirements of the Convention have been satisfied;

(C) the applicable requirements of subsection (d), (e), and (f) of this section have been satisfied; and

(D) such importation is not made in the course of a commercial activity;

be presumed to be an importation not in violation of any provision of this Act or any regulation issued pursuant to this Act.

(d) IMPORTS AND EXPORTS.—

(1) IN GENERAL.—It is unlawful for any person, without first having obtained permission from the Secretary, to engage in business—

(A) as an importer or exporter of fish or wildlife (other than shellfish and fishery products which (i) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (ii) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants; or

(B) as an importer or exporter of any amount of raw or worked African elephant ivory.

(2) REQUIREMENTS.—Any person required to obtain permission under paragraph (1) of this subsection shall—

(A) keep such records as will fully and correctly disclose each importation or exportation of fish, wildlife, plants, or African elephant ivory made by him and the subsequent disposition, made by him with respect to such fish, wildlife, plants, or ivory;

(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his place of business, an opportunity to examine his inventory of imported fish, wildlife, plants, or African elephant ivory and the records required to be kept under subparagraph (A) of this paragraph, and to copy such records; and

(C) file such reports as the Secretary may require.

(3) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

(4) RESTRICTION ON CONSIDERATION OF VALUE OF AMOUNT OF AFRICAN ELEPHANT IVORY IMPORTED OR EXPORTED.—In granting permission under this subsection for importation or exportation of African elephant ivory, the Secretary shall not vary the requirements for obtaining such permission on the basis of the value or amount of ivory imported or exported under such permission.

(e) REPORTS.—It is unlawful for any person importing or exporting fish or wildlife (other than shellfish and fishery products which (1) are not listed pursuant to section 4 of this Act as endangered or threatened species, and (2) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants to fail to file any declaration or report as the Secretary deems necessary to facilitate enforcement of this Act or to meet the obligations of the Convention.

(f) DESIGNATION OF PORTS.—(1) It is unlawful for any person subject to the jurisdiction of the United States to import into or export from the United States any fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (B) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants, except at a port of ports designated by the Secretary of the Interior. For the purposes of facilitating enforcement of this Act and reducing the costs thereof, the Secretary of the Interior, with approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and change such designations. The Secretary of the Interior, under such terms and conditions as he may prescribe, may permit the importation or exportation at nondesignated ports in the interest of the health or safety of the fish or wildlife or plants, or for other reasons if, in his discretion, he deems it appropriate and consistent with the purpose of this subsection.

(2) Any port designated by the Secretary of the Interior under the authority of section 4(d) of the Act of December 5, 1969 (16 U.S.C. 666cc-4(d)), shall, if such designation is in effect on the day before the date of the enactment of this Act, be deemed to be a port designated by the Secretary under paragraph (1) of this subsection until such time as the Secretary otherwise provides.

(g) VIOLATIONS.—It is unlawful for any person subject to the jurisdiction of the United States to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in this section.

EXCEPTIONS

SEC. 10. [16 U.S.C. 1539] (a) PERMITS.—(1) The Secretary may permit, under such terms and conditions as he shall prescribe—

(A) any act otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the af-

fectured species, including, but not limited to, acts necessary for the establishment and maintenance of experimental populations pursuant subsection (j); or

(B) any taking otherwise prohibited by section 9(a)(1)(B) if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

(2)(A) No permit may be issued by the Secretary authorizing any taking referred to in paragraph (1)(B) unless the applicant therefor submits to the Secretary a conservation plan that specifies—

(i) the impact which will likely result from such taking;

(ii) what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;

(iii) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and

(iv) such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan.

(B) If the Secretary finds, after opportunity for public comment, with respect to a permit application and the related conservation plan that—

(i) the taking will be incidental;

(ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;

(iii) the applicant will ensure that adequate funding for the plan will be provided;

(iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

(v) the measures, if any, required under subparagraph (A)(iv) will be met;

and he has received such other assurances as he may require that the plan will be implemented, the Secretary shall issue the permit. The permit shall contain such terms and conditions as the Secretary deems necessary or appropriate to carry out the purposes of this paragraph, including, but not limited to, such reporting requirements as the Secretary deems necessary for determining whether such terms and conditions are being complied with.

(C) The Secretary shall revoke a permit issued under this paragraph if he finds that the permittee is not complying with the terms and conditions of the permit.

(b) **HARDSHIP EXEMPTIONS.**—(1) If any person enters into a contract with respect to a species of fish or wildlife or plant before the date of the publication in the Federal Register of notice of consideration of that species as an endangered species and the subsequent listing of that species as an endangered species pursuant to section 4 of this Act will cause undue hardship to such person under the contract, the Secretary, in order to minimize such hardship, may exempt such person from the application of section 9(a) of this Act to the extent the Secretary deems appropriate if such person applies to him for such exemption and includes with such application such information as the Secretary may require to prove such hardship; except that (A) no such exemption shall be for a duration of more than one year from the date of publication in the

Federal Register of notice of consideration of the species concerned, or shall apply to a quantity of fish or wildlife or plants in excess of that specified by the Secretary; (B) the one-year period for those species of fish or wildlife listed by the Secretary as endangered prior to the effective date of this Act shall expire in accordance with the terms of section 3 of the Act of December 5, 1969 (83 Stat. 275); and (C) no such exemption may be granted for the importation or exportation of a specimen listed in Appendix I of the Convention which is to be used in a commercial activity.

(2) As used in this subsection, the term "undue economic hardship" shall include, but not be limited to:

(A) substantial economic loss resulting from inability caused by this Act to perform contracts with respect to species of fish and wildlife entered into prior to the date of publication in the Federal Register of a notice of consideration of such species as an endangered species;

(B) substantial economic loss to persons who, for the year prior to the notice of consideration of such species as an endangered species, derived a substantial portion of their income from the lawful taking of any listed species, which taking would be made unlawful under this Act; or

(C) curtailment of subsistence taking made unlawful under this Act by persons (i) not reasonably able to secure other sources of subsistence; and (ii) dependent to a substantial extent upon hunting and fishing for subsistence; and (iii) who must engage in such curtailed taking for subsistence purposes.

(3) The Secretary may make further requirements for a showing of undue economic hardship as he deems fit. Exceptions granted under this section may be limited by the Secretary in his discretion as to time, area, or other factor of applicability.

(c) NOTICE AND REVIEW.—The Secretary shall publish notice in the Federal Register of each application for an exemption or permit which is made under this section. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data, views, or arguments with respect to the application; except that such thirty-day period may be waived by the Secretary in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within ten days following the issuance of the exemption or permit. Information received by the Secretary as part of any application shall be available to the public as a matter of public record at every stage of the proceeding.

(d) PERMIT AND EXEMPTION POLICY.—The Secretary may grant exceptions under subsections (a)(1)(A) and (b) of this section only if he finds and publishes his finding in the Federal Register that (1) such exceptions were applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section 2 of this Act.

(e) ALASKA NATIVES.—(1) Except as provided in paragraph (4) of this subsection the provisions of this Act shall not apply with respect to the taking of any endangered species or threatened spe-

cies, or the importation of any such species taken pursuant to this section, by—

(A) any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska; or

(B) any non-native permanent resident of an Alaska native village;

if such taking is primarily for subsistence purposes. Non-edible by-products of species taken pursuant to this section may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing; except that the provisions of this subsection shall not apply to any non-native resident of an Alaskan native village found by the Secretary to be not primarily dependent upon the taking of fish and wildlife for consumption or for the creation and sale of authentic native articles of handicrafts and clothing.

(2) Any taking under this subsection may not be accomplished in a wasteful manner.

(3) As used in this subsection—

(i) The term “subsistence” includes selling any edible portion of fish or wildlife in native villages and towns in Alaska for native consumption within native villages or towns; and

¹(ii) The term “authentic native articles of handicrafts and clothing” means items composed wholly or in some significant respect to natural materials, and which are produced, decorated or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting.

(4) Notwithstanding the provisions of paragraph (1) of this subsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking under the provisions of this subsection is an endangered species or threatened species, and that such taking materially and negatively affects the threatened or endangered species, he may prescribe regulations upon the taking of such species by any such Indian, Aleut, Eskimo, or non-native Alaskan resident of an Alaskan native village. Such regulations may be established with reference to species, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this Act. Such regulations shall be prescribed after a notice and hearings in the affected judicial districts of Alaska and as otherwise required by section 103 of the Marine Mammal Protection Act of 1972, and shall be removed as soon as the Secretary determines that the need for their impositions has disappeared.

(f)(1) As used in this subsection—

(A) The term “pre-Act endangered species part” means—

(i) any sperm whale oil, including derivatives thereof, which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or

¹So in law. Section 10(e)(3)(ii) of the Endangered Species Act of 1973 paragraph indention is incorrect. Indention should be same as 10(e)(3)(i)

(ii) any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

(B) The term "scrimshaw product" means any art form which involves the substantial etching or engraving of designs upon, or the substantial carving of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea. For purposes of this subsection, polishing or the adding of minor superficial markings does not constitute substantial etching, engraving, or carving.

(2) The Secretary, pursuant to the provisions of this subsection, may exempt, if such exemption is not in violation of the Convention, any pre-Act endangered species part from one or more of the following prohibitions.

(A) The prohibition on exportation from the United States set forth in section 9(a)(1)(A) of this Act.

(B) Any prohibition set forth in section 9(a)(1) (E) or (F) of this Act.

(3) Any person seeking an exemption described in paragraph (2) of this subsection shall make application therefor to the Secretary in such form and manner as he shall prescribe, but no such application may be considered by the Secretary unless the application—

(A) is received by the Secretary before the close of the one-year period beginning on the date on which regulations promulgated by the Secretary to carry out this subsection first take effect;

(B) contains a complete and detailed inventory of all pre-Act endangered species parts for which the applicant seeks exemption;

(C) is accompanied by such documentation as the Secretary may require to prove that any endangered species part or product claimed by the applicant to be a pre-Act endangered species part is in fact such a part; and

(D) contains such other information as the Secretary deems necessary and appropriate to carry out the purposes of this subsection.

(4) If the Secretary approves any application for exemption made under this subsection, he shall issue to the applicant a certificate of exemption which shall specify—

(A) any prohibition in section 9(a) of this Act which is exempted;

(B) the pre-Act endangered species parts to which the exemption applies;

(C) the period of time during which the exemption is in effect, but no exemption made under this subsection shall have force and effect after the close of the three-year period beginning on the date of issuance of the certificate unless such exemption is renewed under paragraph (8); and

(D) any term or condition prescribed pursuant to paragraph (5) (A) or (B), or both, which the Secretary deems necessary or appropriate.

(5) The Secretary shall prescribe such regulations as he deems necessary and appropriate to carry out the purposes of this subsection. Such regulations may set forth—

(A) terms and conditions which may be imposed on applicants for exemptions under this subsection (including, but not limited to, requirements that applicants register, inventories, keep complete sales records, permit duly authorized agents of the Secretary to inspect such inventories and records, and periodically file appropriate reports with the Secretary); and

(B) terms and conditions which may be imposed on any subsequent purchaser of any pre-Act endangered species part covered by an exemption granted under this subsection; to insure that any such part so exempted is adequately accounted for and not disposed of contrary to the provisions of this Act. No regulation prescribed by the Secretary to carry out the purposes of this subsection shall be subject to section 4(f)(2)(A)(i) of this Act.

(6)(A) Any contract for the sale of pre-Act endangered species parts which is entered into by the Administrator of General Services prior to the effective date of this subsection and pursuant to the notice published in the Federal Register on January 9, 1973, shall not be rendered invalid by virtue of the fact that fulfillment of such contract may be prohibited under section 9(a)(1)(F).

(B) In the event that this paragraph is held invalid, the validity of the remainder of the Act, including the remainder of this subsection, shall not be affected.

(7) Nothing in this subsection shall be construed to—

(A) exonerate any person from any act committed in violation of paragraphs (1)(A), (1)(E), or (1)(F) of section 9(a) prior to the date of enactment of this subsection; or

(B) immunize any person from prosecution for any such act.

(8)(A)(i) Any valid certificate of exemption which was renewed after October 13, 1982, and was in effect on March 31, 1988, shall be deemed to be renewed for a 6-month period beginning on the date of enactment of the Endangered Species Act Amendments of 1988. Any person holding such a certificate may apply to the Secretary for one additional renewal of such certificate for a period not to exceed 5 years beginning on the date of such enactment.

(B) If the Secretary approves any application for renewal of an exemption under this paragraph, he shall issue to the applicant a certificate of renewal of such exemption which shall provide that all terms, conditions, prohibitions, and other regulations made applicable by the previous certificate shall remain in effect during the period of the renewal.

(C) No exemption or renewal of such exemption made under this subsection shall have force and effect after the expiration date of the certificate of renewal of such exemption issued under this paragraph.

(D) No person may, after January 31, 1984, sell or offer for sale in interstate or foreign commerce, and pre-Act finished scrimshaw product unless such person holds a valid certificate of exemption issued by the Secretary under this subsection, and unless such product or the raw material for such product was held by such person on October 13, 1982.

(g) In connection with any action alleging a violation of section 9, any person claiming the benefit of any exemption or permit under this Act shall have the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation.

(h) CERTAIN ANTIQUE ARTICLES.—(1) Sections 4(d), 9(a), and 9(c) do not apply to any article which—

(A) is not less than 100 years of age;

(B) is composed in whole or in part of any endangered species or threatened species listed under section 4;

(C) has not been repaired or modified with any part of any such species on or after the date of the enactment of this Act; and

(D) is entered at a port designated under paragraph (3).

(2) Any person who wishes to import an article under the exception provided by this subsection shall submit to the customs officer concerned at the time of entry of the article such documentation as the Secretary of the Treasury, after consultation with the Secretary of the Interior, shall by regulation require as being necessary to establish that the article meets the requirements set forth in paragraph (1) (A), (B), and (C).

(3) The Secretary of the Treasury, after consultation with the Secretary of the Interior, shall designate one port within each customs region at which articles described in paragraph (1) (A), (B), and (C) must be entered into the customs territory of the United States.

(4) Any person who imported, after December 27, 1973, and on or before the date of the enactment of the Endangered Species Act Amendments of 1978, any article described in paragraph (1) which—

(A) was not repaired or modified after the date of importation with any part of any endangered species or threatened species listed under section 4;

(B) was forfeited to the United States before such date of the enactment, or is subject to forfeiture to the United States on such date of enactment, pursuant to the assessment of a civil penalty under section 11; and

(C) is in the custody of the United States on such date of enactment;

may, before the close of the one-year period beginning on such date of enactment make application to the Secretary for return of the article. Application shall be made in such form and manner, and contain such documentation, as the Secretary prescribes. If on the basis of any such application which is timely filed, the Secretary is satisfied that the requirements of this paragraph are met with respect to the article concerned, the Secretary shall return the article to the applicant and the importation of such article shall, on and after the date of return, be deemed to be a lawful importation under this Act.

(i) NONCOMMERCIAL TRANSHIPMENTS.—Any importation into the United States of fish or wildlife shall, if—

(1) such fish or wildlife was lawfully taken and exported from the country of origin and country of reexport, if any;

(2) such fish or wildlife is in transit or transshipment through any place subject to the jurisdiction of the United States en route to a country where such fish or wildlife may be lawfully imported and received;

(3) the exporter or owner of such fish or wildlife gave explicit instructions not to ship such fish or wildlife through any place subject to the jurisdiction of the United States, or did all that could have reasonably been done to prevent transshipment, and the circumstances leading to the transshipment were beyond the exporter's or owner's control;

(4) the applicable requirements of the Convention have been satisfied; and

(5) such importation is not made in the course of a commercial activity,

be an importation not in violation of any provision of this Act or any regulation issued pursuant to this Act while such fish or wildlife remains in the control of the United States Customs Service.

(j) EXPERIMENTAL POPULATIONS.—(1) For purposes of this subsection, the term “experimental population” means any population (including any offspring arising solely therefrom) authorized by the Secretary for release under paragraph (2), but only when, and at such times as, the population is wholly separate geographically from nonexperimental populations of the same species.

(2)(A) The Secretary may authorize the release (and the related transportation) of any population (including eggs, propagules, or individuals) of an endangered species or a threatened species outside the current range of such species if the Secretary determines that such release will further the conservation of such species.

(B) Before authorizing the release of any population under subparagraph (A), the Secretary shall by regulation identify the population and determine, on the basis of the best available information, whether or not such population is essential to the continued existence of an endangered species or a threatened species.

(C) For the purposes of this Act, each member of an experimental population shall be treated as a threatened species; except that—

(i) solely for purposes of section 7 (other than subsection (a)(1) thereof), an experimental population determined under subparagraph (B) to be not essential to the continued existence of a species shall be treated, except when it occurs in an area within the National Wildlife Refuge System or the National Park System, as a species proposed to be listed under section 4; and

(ii) critical habitat shall not be designated under this Act for any experimental population determined under subparagraph (B) to be not essential to the continued existence of a species.

(3) The Secretary, with respect to population of endangered species or threatened species that the Secretary authorized, before the date of the enactment of this subsection, for release in geographical areas separate from the other populations of such species, shall determine by regulation which of such populations are an experimental population for the purposes of this subsection and

whether or not each is essential to the continued existence of an endangered species or a threatened species.

PENALTIES AND ENFORCEMENT

SEC. 11. [16 U.S.C. 1540] (a) CIVIL PENALTIES.—(1) Any person who knowingly violates, and any person engaged in business as an importer or exporter of fish, wildlife, or plants who violates, any provision of this Act, or any provision of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a)(1)(A), (B), (C), (D), (E), or (F), (a)(2)(A), (B), (C), or (D), (c), (d), (other than regulation relating to recordkeeping or filing or reports), (f), or (g) of section 9 of this Act, may be assessed a civil penalty by the Secretary of not more than \$25,000 for each violation. Any person who knowingly violates, and any person engaged in business as an importer or exporter of fish, wildlife, or plants who violates, any provision of any other regulation issued under this Act may be assessed a civil penalty by the Secretary of not more than \$12,000 for each such violation. Any person who otherwise violates any provision of this Act, or any regulation, permit, or certificate issued hereunder, may be assessed a civil penalty by the Secretary of not more than \$500 for each such violation. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Secretary. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action on the record made before the Secretary and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) Hearings held during proceedings for the assessment of civil penalties by paragraph (1) of this subsection shall be conducted in accordance with section 554 of title 5, United States Code. The Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and 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 contumacy or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or 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.

(3) Notwithstanding any other provision of this Act, no civil penalty shall be imposed if it can be shown by a preponderance of the evidence that the defendant committed an act based on a good faith belief that he was acting to protect himself or herself, a mem-

ber of his or her family, or any other individual from bodily harm, from any endangered or threatened species.

(b) CRIMINAL VIOLATIONS.—(1) Any person who knowingly violates any provision of this Act, of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a)(1)(A), (B), (C), (D), (E), or (F); (a)(2)(A), (B), (C), or (D), (c), (d) (other than a regulation relating to recordkeeping, or filing of reports), (f), or (g) of section 9 of this Act shall, upon conviction, be fined not more than \$50,000 or imprisoned for not more than one year, or both. Any person who knowingly violates any provision of any other regulation issued under this Act shall, upon conviction, be fined not more than \$25,000 or imprisoned for not more than six months, or both.

(2) The head of any Federal agency which has issued a lease, license, permit, or other agreement authorizing a person to import or export fish, wildlife, or plants, or to operate a quarantine station for imported wildlife, or authorizing the use of Federal lands, including grazing of domestic livestock, to any person who is convicted of a criminal violation of this Act or any regulation, permit, or certificate issued hereunder may immediately modify, suspend, or revoke each lease, license, permit, or other agreement. The Secretary shall also suspend for a period of up to one year, or cancel, any Federal hunting or fishing permits or stamps issued to any person who is convicted of a criminal violation of any provision of this Act or any regulation, permit, or certificate issued hereunder. The United States shall not be liable for the payments of any compensation, reimbursement, or damages in connection with the modification, suspension, or revocation of any leases, licenses permits stamps, or other agreements pursuant to this section.

(3) Notwithstanding any other provision of this Act, it shall be a defense to prosecution under this subsection if the defendant committed the offense based on a good faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual, from bodily harm from any endangered or threatened species.

(c) DISTRICT COURT JURISDICTION.—The several district courts of the United States; including the courts enumerated in section 460 of title 28, United States Code, shall have jurisdiction over any actions arising under this Act. For the purpose of this Act, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii.

(d) REWARDS AND CERTAIN INCIDENTAL EXPENSES.—The Secretary or the Secretary of the Treasury shall pay, from sums received as penalties, fines, or forfeitures of property for any violations of this chapter or any regulation issued hereunder (1) a reward to any person who furnishes information which leads to an arrest, a criminal conviction, civil penalty assessment, or forfeiture of property for any violation of this chapter or any regulation issued hereunder, and (2) the reasonable and necessary costs incurred by any person in providing temporary care for any fish, wildlife, or plant pending the disposition of any civil or criminal proceeding alleging a violation of this chapter with respect to that fish, wildlife, or plant. The amount of the reward, if any, is to be designated by the Secretary or the Secretary of the Treasury, as

appropriate. Any officer or employee of the United States or any State or local government who furnishes information or renders service in the performance of his official duties is ineligible for payment under this subsection. Whenever the balance of sums received under this section and section 6(d) of the Act of November 16, 1981 (16 U.S.C. 3375(d)) as penalties or fines, or from forfeitures of property, exceed \$500,000, the Secretary of the Treasury shall deposit an amount equal to such excess balance in the cooperative endangered species conservation fund established under section 6(i) of this Act.

(e) ENFORCEMENT.—(1) The provisions of this Act and any regulations or permits issued pursuant thereto shall be enforced by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, or all such Secretaries. Each such Secretary may utilize by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or any State agency for purposes of enforcing this Act.

(2) The judges of the district courts of the United States and the United States magistrates may within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this Act and any regulation issued thereunder.

(3) Any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, to enforce this Act may detain for inspection and inspect any package, crate, or other container, including its contents, and all accompanying documents, upon importation or exportation. Such persons may make arrests without a warrant for any violation of this Act if he has reasonable grounds to believe that the person to be arrested is committing the violation in his presence or view and may execute and serve any arrest warrant, search warrant, or other warrant or civil or criminal process issued by any officer or court of competent jurisdiction for enforcement of this Act. Such person so authorized may search and seize, with or without a warrant, as authorized by law. Any fish, wildlife, property, or item so seized shall be held by any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating pending disposition of civil or criminal proceedings, or the institution of an action in rem for forfeiture of such fish, wildlife, property, or item pursuant to paragraph (4) of the subsection; except that the Secretary may, in lieu of holding such fish, wildlife, property, or item, permit the owner or consignee to post a bond or other surety satisfactory to the Secretary, but upon forfeiture of any such property to the United States, or the abandonment or waiver of any claim to any such property, it shall be disposed of (other than by sale to the general public) by the Secretary in such a manner, consistent with the purposes of this Act, as the Secretary shall by regulation prescribe.

(4)(A) All fish or wildlife or plants taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, exported, or imported contrary to the provisions of this Act, any regulation made pursuant thereto, or any

permit or certificate issued hereunder shall be subject to forfeiture to the United States.

(B) All guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used to aid the taking, possessing, selling, purchasing, offering for sale or purchase, transporting, delivering, receiving, carrying, shipping, exporting, or importing of any fish or wildlife or plants in violation of this Act, any regulation made pursuant thereto, or any permit or certificate issued thereunder shall be subject to forfeiture to the United States upon conviction of a criminal violation pursuant to section 11(b)(1) of this Act.

(5) All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of this Act, be exercised or performed by the Secretary or by such persons as he may designate.

(6) The Attorney General of the United States may seek to enjoin any person who is alleged to be in violation of any provision of this Act or regulation issued under authority thereof.

(f) REGULATIONS.—The Secretary, the Secretary of the Treasury, and the Secretary of the Department in which the Coast Guard is operating, are authorized to promulgate such regulations as may be appropriate to enforce this Act, and charge reasonable fees for expenses to the Government connected with permits or certificates authorized by this Act including processing applications and reasonable inspections, and with the transfer, board, handling, or storage of fish or wildlife or plants and evidentiary items seized and forfeited under this Act. All such fees collected pursuant to this subsection shall be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the services. Appropriated funds may be expended pending reimbursement from parties in interest.

(g) CITIZEN SUITS.—(1) Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf—

(A) to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this Act or regulation issued under the authority thereof; or

(B) to compel the Secretary to apply, pursuant to section 6(g)(2)(B)(ii) of this Act, the prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1)(B) of this Act with respect to the taking of any resident endangered species or threatened species within any State; or

(C) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under section 4 which is not discretionary with the Secretary.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any such provision or regulation or to order the Secretary to perform such act or duty, as the case may be. In any civil suit commenced under subparagraph (B) the district court shall compel the Secretary to apply the prohibition sought if the court finds that the allegation that an emergency exists is supported by substantial evidence.

(2)(A) No action may be commenced under subparagraph (1)(A) of this section—

(i) prior to sixty days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision or regulation;

(ii) if the Secretary has commenced action to impose a penalty pursuant to subsection (a) of this section; or

(iii) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of any such provision or regulation.

(B) No action may be commenced under subparagraph (1)(B) of this section—

(i) prior to sixty days after written notice has been given to the Secretary setting forth the reasons why an emergency is thought to exist with respect to an endangered species or a threatened species in the State concerned; or

(ii) if the Secretary has commenced and is diligently prosecuting action under section 6(g)(2)(B)(ii) of this Act to determine whether any such emergency exists.

(C) No action may be commenced under subparagraph (1)(C) of this section prior to sixty days after written notice has been given to the Secretary; except that such action may be brought immediately after such notification in the case of an action under this section respecting an emergency posing a significant risk to the well-being of any species of fish or wildlife or plants.

(3)(A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency).

(h) COORDINATION WITH OTHER LAWS.—The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this Act with the administration of the animal quarantine laws (21 U.S.C. 101–105, 111–135b, and 612–

614) and section 306 of the Tariff Act of 1930 (19 U.S.C. 1306). Nothing in this Act or any amendment made by this Act shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations or possession of animals and other articles and no proceeding or determination under this Act shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture. Nothing in this Act shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, including, without limitation, section 527 of that Act (19 U.S.C. 1527), relating to the importation of wildlife taken, killed, possessed, or exported to the United States in violation of the laws or regulations of a foreign country.

ENDANGERED PLANTS

SEC. 12. [16 U.S.C. 1541] The Secretary of the Smithsonian Institution, in conjunction with other affected agencies, is authorized and directed to review (1) species of plants which are now or may become endangered, or threatened and (2) methods of adequately conserving such species, and to report to Congress, within one year after the date of the enactment of this Act, the results of such review including recommendations for new legislation or the amendment of existing legislation.

CONFORMING AMENDMENTS

SEC. 13. [Section 13 consists of amendments to other Acts.]

REPEALER

SEC. 14. [Section 14 consists of repeals of provisions of law.]

AUTHORIZATION OF APPROPRIATIONS

SEC. 15. [16 U.S.C. 1542] (a) IN GENERAL.—Except as provided in subsection (b), (c), and (d), there are authorized to be appropriated—

(1) not to exceed \$35,000,000 for fiscal year 1988, \$36,500,000 for fiscal year 1989, \$38,000,000 for fiscal year 1990, \$39,500,000 for fiscal year 1991, and \$41,500,000 for fiscal year 1992 to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act;

(2) not to exceed \$5,750,000 for fiscal year 1988, \$6,250,000 for each of fiscal years 1989 and 1990, and \$6,750,000 for each of fiscal year 1991 and 1992 to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act; and

(3) not to exceed \$2,200,000 for fiscal year 1988, \$2,400,000 for each of fiscal years 1989 and 1990, and \$2,600,000 for each of fiscal years 1991 and 1992, to enable the Department of Agriculture to carry out its functions and responsibilities with respect to the enforcement of this Act and

the Convention which pertain to the importation or exportation of plants.

(b) EXEMPTIONS FROM ACT.—There are authorized to be appropriated to the Secretary to assist him and the Endangered Species Committee in carrying out their functions under sections¹ 7 (e), (g), and (h) not to exceed \$600,000 for each of fiscal years 1988, 1989, 1990, 1991, and 1992.

(c) CONVENTION IMPLEMENTATION.—There are authorized to be appropriated to the Department of the Interior for purposes of carrying out section 8A(e) not to exceed \$400,000 for each of fiscal years 1988, 1989, and 1990, and \$500,000 for each of fiscal years 1991 and 1992, and such sums shall remain available until expended.

EFFECTIVE DATE

SEC. 16. [16 U.S.C. 1531 note] This Act shall take effect on the date of its enactment.

MARINE MAMMAL PROTECTION ACT OF 1972

SEC. 17. [16 U.S.C. 1543] Except as otherwise provided in this Act, no provision of this Act shall take precedence over any more restrictive conflicting provision of the Marine Mammal Protection Act of 1972.

ANNUAL COST ANALYSIS BY THE FISH AND WILDLIFE SERVICE

SEC. 18. [16 U.S.C. 1544] Notwithstanding section 3003 of Public Law 104–66 (31 U.S.C. 1113 note; 109 Stat. 734), on or before January 15, 1990, and each January 15 thereafter, the Secretary of the Interior, acting through the Fish and Wildlife Service, shall submit to the Congress an annual report covering the preceding fiscal year which shall contain—

(1) an accounting on a species by species basis of all reasonably unidentifiable Federal expenditures made primarily for the conservation of endangered or threatened species pursuant to this Act; and

(2) an accounting on a species by species basis for all reasonably identifiable expenditures made primarily for the conservation of endangered or threatened species pursuant to this Act by states receiving grants under section 6.

¹ So in original. Probably should be “section”.

The Marine Mammal Protection Act of 1972 as Amended¹

To protect marine mammals; to establish a Marine Mammal Commission; for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, with the following table of contents, may be cited as the "Marine Mammal Protection Act of 1972".

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This copy of the Marine Mammal Protection Act is provided for information only. Before relying on any portion of the Act as it appears here, reference should be made to the official report of the Act in the United States Code.

To assist the user, headings have been provided for most subsections and some lesser provisions. Some headings were enacted as part of the Act. Other have been added to the Act as it appears in the United States Code. Headings included in the United States Code, but which were not enacted as part of the Marine Mammal Protection Act, appear in brackets.

Certain provisions of the Act set forth requirements relative to the time of enactment of the provision. To assist the reader, these provisions have been annotated by including in brackets a specific date when the provision becomes effective or by which a required action is or was to be taken.

Findings and Declaration of Policy

16 U.S.C. 1361

Sec. 2. The Congress finds that—

(1) certain species and population stocks of marine mammals are, or may be, in danger of extinction or depletion as a result of man's activities;

(2) such species and population stocks should not be permitted to diminish beyond the point at which they cease to be a significant functioning element in the ecosystem of which they are a part, and, consistent with this major objective, they should not be permitted to diminish below their optimum sustainable population. Further measures should be immediately taken to replenish any species or population stock which has already diminished below that population. In particular, efforts should be made to protect essential habitats, including the rookeries, mating grounds, and areas of similar significance for each species of marine mammal from the adverse effect of man's actions;

(3) there is inadequate knowledge of the ecology and population dynamics of such marine mammals and of the factors which bear upon their ability to reproduce themselves successfully;

(4) negotiations should be undertaken immediately to encourage the development of international arrangements for research on, and conservation of, all marine mammals;

(5) marine mammals and marine mammal products either—

(A) move in interstate commerce, or

(B) affect the balance of marine ecosystems in a manner which is important to other animals and animal products which move in interstate commerce,

and that the protection and conservation of marine mammals and their habitats is therefore necessary to insure the continuing availability of those products which move in interstate commerce; and

(6) marine mammals have proven themselves to be resources of great international significance, esthetic and recreational as well as economic, and it is the sense of the Congress that they should be protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource management and that the primary objective of their management should be to maintain the health and stability of the marine ecosystem. Whenever consistent with this primary objective, it should be the goal to obtain an optimum sustainable population keeping in mind the carrying capacity of the habitat.

Definitions

16 U.S.C. 1362

Sec. 3. For the purposes of this chapter—

(1) The term “depletion” or “depleted” means any case in which—

(A) the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under subchapter III of this chapter, determines that a species or population stock is below its optimum sustainable population;

(B) a State, to which authority for the conservation and management of a species or population stock is transferred under section 1379 of this title, determines that such species or stock is below its optimum sustainable population; or

(C) a species or population stock is listed as an endangered species or a threatened species under the Endangered Species Act of 1973 [16 U.S.C. 1531 et seq.].

(2) The terms “conservation” and “management” means the collection and application of biological information for the purposes of increasing and maintaining the number of animals within species and populations of marine mammals at their optimum sustainable population. Such terms include the entire scope of activities that constitute a modern scientific resource program, including, but not limited to, research, census, law enforcement, and habitat acquisition and improvement. Also included within these terms, when and where appropriate, is the periodic or total protection of species or populations as well as regulated taking.

(3) The term “district court of the United States” includes the District Court of Guam, District Court of the Virgin Islands, District Court of Puerto Rico, District Court of the Canal Zone, and, in the case of American Samoa and the Trust Territory of the Pacific Islands, the District Court of the United States for the District of Hawaii.

(4) The term “humane” in the context of the taking of a marine mammal means that method of taking which involves the least possible degree of pain and suffering practicable to the mammal involved.

(5) The term “intermediary nation” means a nation that exports yellowfin tuna or yellowfin tuna products to the United States and that imports yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation into the United States pursuant to section 1371 (a)(2)(B) of this title.

(6) The term “marine mammal” means any mammal which

(A) is morphologically adapted to the marine environment (including sea otters and members of the orders Sirenia, Pinnipedia and Cetacea), or

(B) primarily inhabits the marine environment (such as the polar bear); and, for the purposes of this chapter, includes any part of any such marine mammal, including its raw, dressed, or dyed fur or skin.

(7) The term “marine mammal product” means any item of merchandise which consists, or is composed in whole or in part, of any marine mammal.

(8) The term “moratorium” means a complete cessation of the taking of marine mammals and a complete ban on the importation into the United States of marine mammals and marine mammal products, except as provided in this chapter.

(9) The term “optimum sustainable population” means, with respect to any population stock, the number of animals which will result in the maximum productivity of the

population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.

(10) The term “person” includes

(A) any private person or entity, and

(B) any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

(11) The term “population stock” or “stock” means a group of marine mammals of the same species or smaller taxa in a common spatial arrangement, that interbreed when mature.

(12)

(A) Except as provided in subparagraph (B), the term “Secretary” means—

(i) the Secretary of the department in which the National Oceanic and Atmospheric Administration is operating, as to all responsibility, authority, funding, and duties under this chapter with respect to members of the order Cetacea and members, other than walruses, of the order Pinnipedia, and

(ii) the Secretary of the Interior as to all responsibility, authority, funding, and duties under this chapter with respect to all other marine mammals covered by this chapter.

(B) in [1] section 1387 of this title and subchapter V of this chapter (other than section 1421f-1 of this title) the term “Secretary” means the Secretary of Commerce.

(13) The term “take” means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

(14) The term “United States” includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, and Northern Mariana Islands.

(15) The term “waters under the jurisdiction of the United States” means—

(A) the territorial sea of the United States;

(B) the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the other boundary 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; and

(C) 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, 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, except that this subparagraph shall not apply before 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.

(16) 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.

(17) The term “competent regional organization”—

(A) for the tuna fishery in the eastern tropical Pacific Ocean, means the Inter-American Tropical Tuna Commission; and

(B) in any other case, means an organization consisting of those nations participating in a tuna fishery, the purpose of which is the conservation and management of that fishery and the management of issues relating to that fishery.

(18)

(A) The term “harassment” means any act of pursuit, torment, or annoyance which—

(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or

(ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

(B) In the case of a military readiness activity (as defined in section 315(f) of Public Law 107–314; 16 U.S.C. 703 note) or a scientific research activity conducted by or on behalf of the Federal Government consistent with section 1374 (c)(3) of this title, the term “harassment” means—

(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild; or

(ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered.

(C) The term “Level A harassment” means harassment described in subparagraph (A)(i) or, in the case of a military readiness activity or scientific research activity described in subparagraph (B), harassment described in subparagraph (B)(i).

(D) The term “Level B harassment” means harassment described in subparagraph (A)(ii) or, in the case of a military readiness activity or scientific research activity described in subparagraph (B), harassment described in subparagraph (B)(ii).

(19) The term “strategic stock” means a marine mammal stock—

(A) for which the level of direct human-caused mortality exceeds the potential biological removal level;

(B) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973 [16 U.S.C. 1531 et seq.] within the foreseeable future; or

(C) which is listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), or is designated as depleted under this chapter.

(20) The term “potential biological removal level” means the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. The potential biological removal level is the product of the following factors:

(A) The minimum population estimate of the stock.

(B) One-half the maximum theoretical or estimated net productivity rate of the stock at a small population size.

(C) A recovery factor of between 0.1 and 1.0.

(21) The term “Regional Fishery Management Council” means a Regional Fishery Management Council established under section 1852 of this title.

(22) The term “bona fide research” means scientific research on marine mammals, the results of which—

(A) likely would be accepted for publication in a referred scientific journal;

(B) are likely to contribute to the basic knowledge of marine mammal biology or ecology; or

(C) are likely to identify, evaluate, or resolve conservation problems.

(23) The term “Alaska Native organization” means a group designated by law or formally chartered which represents or consists of Indians, Aleuts, or Eskimos residing in Alaska.

(24) The term “take reduction plan” means a plan developed under section 1387 of this title.

(25) The term “take reduction team” means a team established under section 1387 of this title.

(26) The term “net productivity rate” means the annual per capita rate of increase in a stock resulting from additions due to reproduction, less losses due to mortality.

(27) The term “minimum population estimate” means an estimate of the number of animals in a stock that—

(A) is based on the best available scientific information on abundance, incorporating the precision and variability associated with such information; and

(B) provides reasonable assurance that the stock size is equal to or greater than the estimate.

(28) The term “International Dolphin Conservation Program” means the international program established by the agreement signed in LaJolla, California, in June, 1992, as formalized, modified, and enhanced in accordance with the Declaration of Panama.

(29) The term “Declaration of Panama” means the declaration signed in Panama City, Republic of Panama, on October 4, 1995

Effective Date

Sec. 4. The provisions of this Act shall take effect upon the expiration of the sixty-day period following the date of its enactment [December 21, 1972].

Title I—Conservation and Protection of Marine Mammals

Moratorium on taking and importing marine mammals and marine mammal products

16 U.S.C. 1371

Sec. 101.

(a) Imposition; exceptions

There shall be a moratorium on the taking and importation of marine mammals and marine mammal products, commencing on the effective date of this chapter, during which time no permit may be issued for the taking of any marine mammal and no marine mammal or marine mammal product may be imported into the United States except in the following cases:

(1) Consistent with the provisions of section 1374 of this title, permits may be issued by the Secretary for taking, and importation for purposes of scientific research, public display, photography for educational or commercial purposes, or enhancing the survival or recovery of a species or stock, or for importation of polar bear parts (other than internal organs) taken in sport hunts in Canada. Such permits, except permits issued under section 1374 (c)(5) of this title, may be issued if the taking or importation proposed to be made is first reviewed by the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under subchapter III of this chapter. The Commission and Committee shall recommend any proposed taking or importation, other than importation under section 1374 (c)(5) of this title, which is consistent with the purposes and policies of section 1361 of this title. If the Secretary issues such a permit for importation, the Secretary shall issue to the importer concerned a certificate to that effect in such form as the Secretary of the Treasury prescribes, and such importation may be made upon presentation of the certificate to the customs officer concerned.

(2) Marine mammals may be taken incidentally in the course of commercial fishing operations and permits may be issued therefor under section 1374 of this title subject to regulations prescribed by the Secretary in accordance with section 1373 of this title, or in lieu of such permits, authorizations may be granted therefor under section 1387 of this title, subject to regulations prescribed under that section by the Secretary without regard to section 1373 of this title. Such authorizations may be granted under subchapter IV of this chapter with respect to purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, subject to regulations prescribed under that subchapter by the Secretary without regard to section 1373 of this title. In any event it shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate. The Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards. For purposes of applying the preceding sentence, the Secretary—

(A) shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States;

(B) in the case of yellowfin tuna harvested with purse seine nets in the eastern tropical Pacific Ocean, and products therefrom, to be exported to the United States, shall require that the government of the exporting nation provide documentary evidence that—

(i)

(I) the tuna or products therefrom were not banned from importation under this paragraph before the effective date of section 4 of the International Dolphin Conservation Program Act; or

(II) the tuna or products therefrom were harvested after the effective date of section 4 of the International Dolphin Conservation Program Act by vessels of a nation which participates in the International Dolphin Conservation Program, and such harvesting nation is either a member of the Inter-American Tropical Tuna Commission or has initiated (and within 6 months thereafter completed) all steps required of applicant nations, in accordance with article V, paragraph 3 of the Convention establishing the Inter-American Tropical Tuna Commission, to become a member of that organization;

(ii) such nation is meeting the obligations of the International Dolphin Conservation Program and the obligations of membership in the Inter-American Tropical Tuna Commission, including all financial obligations; and

(iii) the total dolphin mortality limits, and per-stock per-year dolphin mortality limits permitted for that nation's vessels under the International Dolphin Conservation Program do not exceed the limits determined for 1997, or for any year thereafter, consistent with the objective of progressively reducing dolphin mortality to a level approaching zero through the setting of annual limits and the goal of eliminating dolphin mortality, and requirements of the International Dolphin Conservation Program;

(C) shall not accept such documentary evidence if—

(i) the government of the harvesting nation does not provide directly or authorize the Inter-American Tropical Tuna Commission to release complete and accurate information to the Secretary in a timely manner—

(I) to allow determination of compliance with the International Dolphin Conservation Program; and

(II) for the purposes of tracking and verifying compliance with the minimum requirements established by the Secretary in regulations promulgated under section 1385 (f) of this title; or

(ii) after taking into consideration such information, findings of the Inter-American Tropical Tuna Commission, and any other relevant information, including information that a nation is consistently failing to take enforcement actions on violations which diminish the effectiveness of the International Dolphin Conservation Program, the Secretary, in consultation with the Secretary of State, finds that the harvesting nation is not in compliance with the International Dolphin Conservation Program.

(D) shall require the government of any intermediary nation to certify and provide reasonable proof to the Secretary that it has not imported, within the preceding six months, any yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation to the United States under subparagraph (B);

(E) shall, six months after importation of yellowfin tuna or tuna products has been banned under this section, certify such fact to the President, which certification shall be deemed to be a certification for the purposes of section 1978 (a) of title 22 for as long as such ban is in effect; and

(F)

(i) except as provided in clause (ii), in the case of fish or products containing fish harvested by a nation whose fishing vessels engage in high seas driftnet fishing, shall require that the government of the exporting nation provide documentary evidence that the fish or fish product was not harvested with a large-scale driftnet in the South Pacific Ocean after July 1, 1991, or in any other water of the high seas after January 1, 1993, and

(ii) in the case of tuna or a product containing tuna harvested by a nation whose fishing vessels engage in high seas driftnet fishing, shall require that the government of the exporting nation provide documentary evidence that the tuna or tuna product was not harvested with a large-scale driftnet anywhere on the high seas after July 1, 1991. For purposes of subparagraph (F), the term “driftnet” has the meaning given such term in section 4003 of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 (16 U.S.C. 1822 note), except that, until January 1, 1994, the term “driftnet” 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)

(A) The Secretary, on the basis of the best scientific evidence available and in consultation with the Marine Mammal Commission, is authorized and directed, from time to time, having due regard to the distribution, abundance, breeding habits, and times and lines of migratory movements of such marine mammals, to determine when, to what extent, if at all, and by what means, it is compatible with this chapter to waive the requirements of this section so as to allow taking, or importing of any marine mammal, or any marine mammal product, and to adopt suitable regulations, issue permits, and make determinations in accordance with sections 1372, 1373, 1374, and 1381 of this title permitting and governing such taking and importing, in accordance with such determinations: Provided, however, That the Secretary, in making such determinations must be assured that the taking of such marine mammal is in accord with sound principles of resource protection and conservation as provided in the purposes and policies of this chapter: Provided, further, however, That no marine mammal or no marine mammal product may be imported into the United States unless the Secretary certifies that the program for taking marine mammals in the country of origin is consistent with the provisions and policies of this chapter. Products of nations not so certified may not be imported into the United States for any purpose, including processing for exportation.

(B) Except for scientific research purposes, photography for educational or commercial purposes, or enhancing the survival or recovery of a species or stock as provided for in paragraph (1) of this subsection, or as provided for under paragraph (5) of this subsection, during the moratorium no permit may be issued for the taking of any marine mammal which has been designated by the Secretary as depleted, and no importation may be made of any such mammal.

(4)

(A) Except as provided in subparagraphs (B) and (C), the provisions of this chapter shall not apply to the use of measures—

(i) by the owner of fishing gear or catch, or an employee or agent of such owner, to deter a marine mammal from damaging the gear or catch;

(ii) by the owner of other private property, or an agent, bailee, or employee of such owner, to deter a marine mammal from damaging private property;

(iii) by any person, to deter a marine mammal from endangering personal safety; or

(iv) by a government employee, to deter a marine mammal from damaging public property, so long as such measures do not result in the death or serious injury of a marine mammal.

(B) The Secretary shall, through consultation with appropriate experts, and after notice and opportunity for public comment, publish in the Federal Register a list of guidelines for use in safely deterring marine mammals. In the case of marine mammals

listed as endangered species or threatened species under the Endangered Species Act of 1973 [16 U.S.C. 1531 et seq.], the Secretary shall recommend specific measures which may be used to nonlethally deter marine mammals. Actions to deter marine mammals consistent with such guidelines or specific measures shall not be a violation of this chapter.

(C) If the Secretary determines, using the best scientific information available, that certain forms of deterrence have a significant adverse effect on marine mammals, the Secretary may prohibit such deterrent methods, after notice and opportunity for public comment, through regulation under this chapter.

(D) The authority to deter marine mammals pursuant to subparagraph (A) applies to all marine mammals, including all stocks designated as depleted under this chapter.

(5)

(A)

(i) Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specified geographical region, the Secretary shall allow, during periods of not more than five consecutive years each, the incidental, but not intentional, taking by citizens while engaging in that activity within that region of small numbers of marine mammals of a species or population stock if the Secretary, after notice (in the Federal Register and in newspapers of general circulation, and through appropriate electronic media, in the coastal areas that may be affected by such activity) and opportunity for public comment—

(I) finds that the total of such taking during each five-year (or less) period concerned will have a negligible impact on such species or stock and will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) of this section or section 1379 (f) of this title or, in the case of a cooperative agreement under both this chapter and the Whaling Convention Act of 1949 (16 U.S.C. 916 et seq.), pursuant to section 1382 (c) of this title; and

(II) prescribes regulations setting forth—

(aa) permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses; and

(bb) requirements pertaining to the monitoring and reporting of such taking.

(ii) For a military readiness activity (as defined in section 315(f) of Public Law 107–314; 16 U.S.C. 703 note), a determination of “least practicable adverse impact on such species or stock” under clause (i)(II)(aa) shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. Before making the required determination, the Secretary shall consult with the Department of Defense regarding personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

(iii) Notwithstanding clause (i), for any authorization affecting a military readiness activity (as defined in section 315(f) of Public Law 107–314; 16 U.S.C. 703 note), the Secretary shall publish the notice required by such clause only in the Federal Register.

(B) The Secretary shall withdraw, or suspend for a time certain (either on an individual or class basis, as appropriate) the permission to take marine mammals under subparagraph (A) pursuant to a specified activity within a specified geographical region if

the Secretary finds, after notice and opportunity for public comment (as required under subparagraph (A) unless subparagraph (C)(i) applies), that—

(i) the regulations prescribed under subparagraph (A) regarding methods of taking, monitoring, or reporting are not being substantially complied with by a person engaging in such activity; or

(ii) the taking allowed under subparagraph (A) pursuant to one or more activities within one or more regions is having, or may have, more than a negligible impact on the species or stock concerned.

(C)

(i) The requirement for notice and opportunity for public comment in subparagraph (B) shall not apply in the case of a suspension of permission to take if the Secretary determines that an emergency exists which poses a significant risk to the well-being of the species or stock concerned.

(ii) Sections 1373 and 1374 of this title shall not apply to the taking of marine mammals under the authority of this paragraph.

(D)

(i) Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specific geographic region, the Secretary shall authorize, for periods of not more than 1 year, subject to such conditions as the Secretary may specify, the incidental, but not intentional, taking by harassment of small numbers of marine mammals of a species or population stock by such citizens while engaging in that activity within that region if the Secretary finds that such harassment during each period concerned—

(I) will have a negligible impact on such species or stock, and

(II) will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) of this section, or section 1379 (f) of this title or pursuant to a cooperative agreement under section 1388 of this title.

(ii) The authorization for such activity shall prescribe, where applicable—

(I) permissible methods of taking by harassment pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) of this section or section 1379 (f) of this title or pursuant to a cooperative agreement under section 1388 of this title,

(II) the measures that the Secretary determines are necessary to ensure no unmitigable adverse impact on the availability of the species or stock for taking for subsistence uses pursuant to subsection (b) of this section or section 1379 (f) of this title or pursuant to a cooperative agreement under section 1388 of this title, and
(III) requirements pertaining to the monitoring and reporting of such taking by harassment, including requirements for the independent peer review of proposed monitoring plans or other research proposals where the proposed activity may affect the availability of a species or stock for taking for subsistence uses pursuant to subsection (b) of this section or section 1379 (f) of this title or pursuant to a cooperative agreement under section 1388 of this title.

(iii) The Secretary shall publish a proposed authorization not later than 45 days after receiving an application under this subparagraph and request public comment

through notice in the Federal Register, newspapers of general circulation, and appropriate electronic media and to all locally affected communities for a period of 30 days after publication. Not later than 45 days after the close of the public comment period, if the Secretary makes the findings set forth in clause (i), the Secretary shall issue an authorization with appropriate conditions to meet the requirements of clause (ii).

(iv) The Secretary shall modify, suspend, or revoke an authorization if the Secretary finds that the provisions of clauses (i) or (ii) are not being met.

(v) A person conducting an activity for which an authorization has been granted under this subparagraph shall not be subject to the penalties of this chapter for taking by harassment that occurs in compliance with such authorization.

(vi) For a military readiness activity (as defined in section 315(f) of Public Law 107-314; 16 U.S.C. 703 note), a determination of “least practicable adverse impact on such species or stock” under clause (i)(I) shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. Before making the required determination, the Secretary shall consult with the Department of Defense regarding personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

(vii) Notwithstanding clause (iii), for any authorization affecting a military readiness activity (as defined in section 315(f) of Public Law 107-314; 16 U.S.C. 703 note), the Secretary shall publish the notice required by such clause only in the Federal Register.

(E)

(i) During any period of up to 3 consecutive years, the Secretary shall allow the incidental, but not the intentional, taking by persons using vessels of the United States or vessels which have valid fishing permits issued by the Secretary in accordance with section 1824 (b) of this title, while engaging in commercial fishing operations, of marine mammals from a species or stock designated as depleted because of its listing as an endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) if the Secretary, after notice and opportunity for public comment, determines that—

(I) the incidental mortality and serious injury from commercial fisheries will have a negligible impact on such species or stock;

(II) a recovery plan has been developed or is being developed for such species or stock pursuant to the Endangered Species Act of 1973; and

(III) where required under section 1387 of this title, a monitoring program is established under subsection (d) of such section, vessels engaged in such fisheries are registered in accordance with such section, and a take reduction plan has been developed or is being developed for such species or stock.

(ii) Upon a determination by the Secretary that the requirements of clause (i) have been met, the Secretary shall publish in the Federal Register a list of those fisheries for which such determination was made, and, for vessels required to register under section 1387 of this title, shall issue an appropriate permit for each authorization granted under such section to vessels to which this paragraph applies. Vessels engaged in a fishery included in the notice published by the Secretary under this clause which are not required to register under section 1387 of this title shall not be subject to the penalties of this chapter for the incidental taking of marine mammals to which this paragraph applies, so long as the owner or master of such vessel reports any incidental mortality or injury of such marine mammals to the Secretary in accordance with section 1387 of this title.

(iii) If, during the course of the commercial fishing season, the Secretary determines that the level of incidental mortality or serious injury from commercial fisheries for which a determination was made under clause (i) has resulted or is likely to result in an

impact that is more than negligible on the endangered or threatened species or stock, the Secretary shall use the emergency authority granted under section 1387 of this title to protect such species or stock, and may modify any permit granted under this paragraph as necessary.

(iv) The Secretary may suspend for a time certain or revoke a permit granted under this subparagraph only if the Secretary determines that the conditions or limitations set forth in such permit are not being complied with. The Secretary may amend or modify, after notice and opportunity for public comment, the list of fisheries published under clause (ii) whenever the Secretary determines there has been a significant change in the information or conditions used to determine such list.

(v) Sections 1373 and 1374 of this title shall not apply to the taking of marine mammals under the authority of this subparagraph.

(vi) This subparagraph shall not govern the incidental taking of California sea otters and shall not be deemed to amend or repeal the Act of November 7, 1986 (Public Law 99-625; 100 Stat. 3500).

(F) Notwithstanding the provisions of this subsection, any authorization affecting a military readiness activity (as defined in section 315(f) of Public Law 107-314; 16 U.S.C. 703 note) shall not be subject to the following requirements:

(i) In subparagraph (A), “within a specified geographical region” and “within that region of small numbers”.

(ii) In subparagraph (B), “within a specified geographical region” and “within one or more regions”.

(iii) In subparagraph (D), “within a specific geographic region”, “of small numbers”, and “within that region”. O4

(6)

(A) A marine mammal product may be imported into the United States if the product—

(i) was legally possessed and exported by any citizen of the United States in conjunction with travel outside the United States, provided that the product is imported into the United States by the same person upon the termination of travel;

(ii) was acquired outside of the United States as part of a cultural exchange by an Indian, Aleut, or Eskimo residing in Alaska; or

(iii) is owned by a Native inhabitant of Russia, Canada, or Greenland and is imported for noncommercial purposes in conjunction with travel within the United States or as part of a cultural exchange with an Indian, Aleut, or Eskimo residing in Alaska.

(B) For the purposes of this paragraph, the term—

(i) “Native inhabitant of Russia, Canada, or Greenland” means a person residing in Russia, Canada, or Greenland who is related by blood, is a member of the same clan or ethnological grouping, or shares a common heritage with an Indian, Aleut, or Eskimo residing in Alaska; and

(ii) “cultural exchange” means the sharing or exchange of ideas, information, gifts, clothing, or handicrafts between an Indian, Aleut, or Eskimo residing in Alaska and a Native inhabitant of Russia, Canada, or Greenland, including rendering of raw marine mammal parts as part of such exchange into clothing or handicrafts through carving, painting, sewing, or decorating.

(b) Exemptions for Alaskan natives

Except as provided in section 1379 of this title, the provisions of this chapter shall not apply with respect to the taking of any marine mammal by any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean if such taking—

(1) is for subsistence purposes; or

(2) is done for purposes of creating and selling authentic native articles of handicrafts and clothing: Provided, That only authentic native articles of handicrafts and clothing may be sold in interstate commerce: And provided further, That any edible portion of marine mammals may be sold in native villages and towns in Alaska or for native consumption. For the purposes of this subsection, the term “authentic native articles of handicrafts and clothing” means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to weaving, carving, stitching, sewing, lacing, beading, drawing and painting; and

(3) in each case, is not accomplished in a wasteful manner.

Notwithstanding the preceding provisions of this subsection, when, under this chapter, the Secretary determines any species or stock of marine mammal subject to taking by Indians, Aleuts, or Eskimos to be depleted, he may prescribe regulations upon the taking of such marine mammals by any Indian, Aleut, or Eskimo described in this subsection. Such regulations may be established with reference to species or stocks, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the purposes of this chapter. Such regulations shall be prescribed after notice and hearing required by section 1373 of this title and shall be removed as soon as the Secretary determines that the need for their imposition has disappeared. In promulgating any regulation or making any assessment pursuant to a hearing or proceeding under this subsection or section 1386 (b)(2) of this title, or in making any determination of depletion under this subsection or finding regarding unmitigable adverse impacts under subsection (a)(5) of this section that affects stocks or persons to which this subsection applies, the Secretary shall be responsible for demonstrating that such regulation, assessment, determination, or finding is supported by substantial evidence on the basis of the record as a whole. The preceding sentence shall only be applicable in an action brought by one or more Alaska Native organizations representing persons to which this subsection applies.

(c) Taking in defense of self or others

It shall not be a violation of this chapter to take a marine mammal if such taking is imminently necessary in self-defense or to save the life of a person in immediate danger, and such taking is reported to the Secretary within 48 hours. The Secretary may seize and dispose of any carcass.

(d) Good Samaritan exemption

It shall not be a violation of this chapter to take a marine mammal if—

(1) such taking is imminently necessary to avoid serious injury, additional injury, or death to a marine mammal entangled in fishing gear or debris;

(2) reasonable care is taken to ensure the safe release of the marine mammal, taking into consideration the equipment, expertise, and conditions at hand;

(3) reasonable care is exercised to prevent any further injury to the marine mammal; and

(4) such taking is reported to the Secretary within 48 hours.

(e) Chapter not to apply to incidental takings by United States citizens employed on foreign vessels outside United States EEZ

The provisions of this chapter shall not apply to a citizen of the United States who incidentally takes any marine mammal during fishing operations outside the United States exclusive economic zone (as defined in section 1802 of this title) when employed on a foreign fishing vessel of a harvesting nation which is in compliance with the International Dolphin Conservation Program.

(f) Exemption of actions necessary for national defense

(1) The Secretary of Defense, after conferring with the Secretary of Commerce, the Secretary of the Interior, or both, as appropriate, may exempt any action or category of actions undertaken by the Department of Defense or its components from compliance with any requirement of this chapter, if the Secretary determines that it is necessary for national defense.

(2) An exemption granted under this subsection—

(A) subject to subparagraph (B), shall be effective for a period specified by the Secretary of Defense; and

(B) shall not be effective for more than 2 years.

(3)

(A) The Secretary of Defense may issue additional exemptions under this subsection for the same action or category of actions, after—

(i) conferring with the Secretary of Commerce, the Secretary of the Interior, or both as appropriate; and

(ii) making a new determination that the additional exemption is necessary for national defense.

(B) Each additional exemption under this paragraph shall be effective for a period specified by the Secretary of Defense, of not more than 2 years.

(4) Not later than 30 days after issuing an exemption under paragraph (1) or an additional exemption under paragraph (3), the Secretary of Defense shall submit to the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate notice describing the exemption and the reasons therefor. The notice may be provided in classified form if the Secretary of Defense determines that use of the classified form is necessary for reasons of national security.

Prohibitions

16 U.S.C. 1372

Sec. 102. (a) [TAKING.] — Except as provided in sections 101, 103, 104, 109, 111, 113, 114, and 118 of this title and title IV, it is unlawful—

(1) for any person subject to the jurisdiction of the United States or any vessel or other conveyance subject to the jurisdiction of the United States to take any marine mammal on the high seas;

(2) except as expressly provided for by an international treaty, convention, or agreement to which the United States is a party and which was entered into before the effective date of this title or by any statute implementing any such treaty, convention, or agreement—

(A) for any person or vessel or other conveyance to take any marine mammal in waters or on lands under the jurisdiction of the United States; or

(B) for any person to use any port, harbor, or other place under the jurisdiction of the United States to take or import marine mammals or marine mammal products; and

(3) for any person, with respect to any marine mammal taken in violation of this title, to possess that mammal or any product from that mammal;

(4) for any person to transport, purchase, sell, export, or offer to purchase, sell, or export any marine mammal or marine mammal product—

(A) that is taken in violation of this Act; or

(B) for any purpose other than public display, scientific research, or enhancing the survival of a species or stock as provided for under subsection 104(c); and

(5) for any person to use, in a commercial fishery, any means or methods of fishing in contravention of any regulations or limitations, issued by the Secretary for that fishery to achieve the purposes of this Act.

(b) [IMPORTATION OF PREGNANT OR NURSING ANIMALS; DEPLETED SPECIES OR STOCK; INHUMANE TAKING.] — Except pursuant to a permit for scientific research, or for enhancing the survival or recovery of a species or stock, issued under section 104(c) of this title, it is unlawful to import into the United States any marine mammal if such mammal was—

(1) pregnant at the time of taking;

(2) nursing at the time of taking, or less than eight months old, whichever occurs later;

(3) taken from a species or population stock which the Secretary has, by regulation published in the Federal Register, designated as a depleted species or stock; or

(4) taken in a manner deemed inhumane by the Secretary.

Notwithstanding the provisions of paragraphs (1) and (2), the Secretary may issue a permit for the importation of a marine mammal, if the Secretary determines that such importation is necessary for the protection or welfare of the animal.

(c) [IMPORTATION OF ILLEGALLY TAKEN MAMMALS.] — It is unlawful to import into the United States any of the following:

(1) Any marine mammal which was—

(A) taken in violation of this title; or

(B) taken in another country in violation of the law of that country.

(2) Any marine mammal product if—

(A) the importation into the United States of the marine mammal from which such product is made is unlawful under paragraph (1) of this subsection; or

(B) the sale in commerce of such product in the country of origin of the product is illegal;

(3) Any fish, whether fresh, frozen, or otherwise prepared, if such fish was caught in a manner which the Secretary has proscribed for persons subject to the jurisdiction of the United States, whether or not any marine mammals were in fact taken incident to the catching of the fish.

(d) [NONAPPLICABILITY OF PROHIBITIONS.] — Subsections (b) and (c) of this section shall not apply—

(1) in the case of marine mammals or marine mammal products, as the case may be, to which subsection (b)(3) of this section applies, to such items imported into the United States before the date on which the Secretary publishes notice in the Federal Register of his proposed rulemaking with respect to the designation of the species or stock concerned as depleted; or

(2) in the case of marine mammals or marine mammal products to which subsection (c)(1)(B) or (c)(2)(B) of this section applies, to articles imported into the United States before the effective date of the foreign law making the taking or sale, as the case may be, of such marine mammals or marine mammal products unlawful.

(e) [RETROACTIVE EFFECT.] — This Act shall not apply with respect to any marine mammal taken before the effective date of this Act [December 21, 1972], or to any marine mammal product consisting of, or composed in whole or in part of, any marine mammal taken before such date.

(f) [COMMERCIAL TAKING OF WHALES.] — It is unlawful for any person or vessel or other conveyance to take any species of whale incident to commercial whaling in waters subject to the jurisdiction of the United States.

Regulations on Taking of Marine Mammals

16 U.S.C. 1373

Sec. 103. (a) [NECESSITY AND APPROPRIATENESS.] — The Secretary, on the basis of the best scientific evidence available and in consultation with the Marine Mammal Commission, shall prescribe such regulations with respect to the taking and importing of animals from each species of marine mammal (including regulations on the taking and importing of individuals within population stocks) as he deems necessary and appropriate to insure that such taking will not be to the disadvantage of those species and population stocks and will be consistent with the purposes and policies set forth in section 2 of this Act.

(b) [FACTORS CONSIDERED IN PRESCRIBING REGULATIONS.] — In prescribing such regulations, the Secretary shall give full consideration to all factors which may affect the extent to which such animals may be taken or imported, including but not limited to the effect of such regulations on—

- (1) existing and future levels of marine mammal species and population stocks;
- (2) existing international treaty and agreement obligations of the United States;
- (3) the marine ecosystem and related environmental considerations;
- (4) the conservation, development, and utilization of fishery resources; and
- (5) the economic and technological feasibility of implementation.

(c) [ALLOWABLE RESTRICTIONS.] — The regulations prescribed under subsection (a) of this section for any species or population stock of marine mammal may include, but are not limited to, restrictions with respect to—

- (1) the number of animals which may be taken or imported in any calendar year pursuant to permits issued under section 104 of this title;
- (2) the age, size, or sex (or any combination of the foregoing) of animals which may be taken or imported, whether or not a quota prescribed under paragraph (1) of this subsection applies with respect to such animals;

(3) the season or other period of time within which animals may be taken or imported;

(4) the manner and locations in which animals may be taken or imported; and

(5) fishing techniques which have been found to cause undue fatalities to any species of marine mammal in a fishery.

(d) [PROCEDURE.] — Regulations prescribed to carry out this section with respect to any species or stock of marine mammals must be made on the record after opportunity for an agency hearing on both the Secretary's determination to waive the moratorium pursuant to section 101(a)(3)(A) of this title and on such regulations, except that, in addition to any other requirements imposed by law with respect to agency rulemaking, the Secretary shall publish and make available to the public either before or concurrent with the publication of notice in the Federal Register of his intention to prescribe regulations under this section—

(1) a statement of the estimated existing levels of the species and population stocks of the marine mammal concerned;

(2) a statement of the expected impact of the proposed regulations on the optimum sustainable population of such species or population stock;

(3) a statement describing the evidence before the Secretary upon which he proposes to base such regulations; and

(4) any studies made by or for the Secretary or any recommendations made by or for the Secretary or the Marine Mammal Commission which relate to the establishment of such regulations.

(e) [PERIODIC REVIEW.] — Any regulation prescribed pursuant to this section shall be periodically reviewed, and may be modified from time to time in such manner as the Secretary deems consistent with and necessary to carry out the purposes of this Act.

(f) [REPORT TO CONGRESS.] — Within six months after the effective date of this Act [June 21, 1973] and every twelve months thereafter, the Secretary shall report to the public through publication in the Federal Register and to the Congress on the current status of all marine mammal species and population stocks subject to the provisions of this Act. His report shall describe those actions taken and those measures believed necessary, including where appropriate, the issuance of permits pursuant to this title to assure the well-being of such marine mammals.⁴

Permits

16 U.S.C. 1374

Sec. 104. (a) [ISSUANCE.] — The Secretary may issue permits which authorize the taking or importation of any marine mammal. Permits for the incidental taking of marine mammals in the course of commercial fishing operations may only be issued as specifically provided for in sections 101(a)(5) or 306, or subsection (h) of this section.

(b) [REQUISITE PROVISIONS.] — Any permit issued under this section shall—

(1) be consistent with any applicable regulation established by the Secretary under section 103 of this title, and

(2) specify—

(A) the number and kind of animals which are authorized to be taken or imported,

(B) the location and manner (which manner must be determined by the Secretary to be humane) in which they may be taken, or from which they may be imported,

(C) the period during which the permit is valid, and

(D) any other terms or conditions which the Secretary deems appropriate.

In any case in which an application for a permit cites as a reason for the proposed taking the overpopulation of a particular species or population stock, the Secretary shall first consider whether or not it would be more desirable to transplant a number of animals (but not to exceed the number requested for taking in the application) of that species or stock to a location not then inhabited by such species or stock but previously inhabited by such species or stock.

(c) [IMPORTATION FOR DISPLAY OR RESEARCH.] —

(1) Any permit issued by the Secretary which authorizes the taking or importation of a marine mammal for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock shall specify, in addition to the conditions required by subsection (b) of this section, the methods of capture, supervision, care, and transportation which must be observed pursuant to such taking or importation. Any person authorized to take or import a marine mammal for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock shall furnish to the Secretary a report on all activities carried out by him pursuant to that authority.

(2)(A) A permit may be issued to take or import a marine mammal for the purpose of public display only to a person which the Secretary determines—

(i) offers a program for education or conservation purposes that is based on professionally recognized standards of the public display community;

(ii) is registered or holds a license issued under 7 U.S.C. 2131 et seq.; and

(iii) maintains facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis and that access to such facilities is not limited or restricted other than by charging of an admission fee.

(B) A permit under this paragraph shall grant to the person to which it is issued the right, without obtaining any additional permit or authorization under this Act, to—

(i) take, import, purchase, offer to purchase, possess, or transport the marine mammal that is the subject of the permit; and

(ii) sell, export, or otherwise transfer possession of the marine mammal, or offer to sell, export, or otherwise transfer possession of the marine mammal—

(I) for the purpose of public display, to a person that meets the requirements of clauses (i), (ii), and (iii) of subparagraph (A);

(II) for the purpose of scientific research, to a person that meets the requirements of paragraph (3); or

(III) for the purpose of enhancing the survival or recovery of a species or stock, to a person that meets the requirements of paragraph (4).

(C) A person to which a marine mammal is sold or exported or to which possession of a marine mammal is otherwise transferred under the authority of subparagraph (B) shall have the rights and responsibilities described in subparagraph (B) with respect to the marine mammal without obtaining any additional permit or authorization under this Act. Such responsibilities shall be limited to—

(i) for the purpose of public display, the responsibility to meet the requirements of clauses (i), (ii), and (iii) of subparagraph (A),

(ii) for the purpose of scientific research, the responsibility to meet the requirements of paragraph (3), and

(iii) for the purpose of enhancing the survival or recovery of a species or stock, the responsibility to meet the requirements of paragraph (4).

(D) If the Secretary—

(i) finds in concurrence with the Secretary of Agriculture, that a person that holds a permit under this paragraph for a marine mammal, or a person exercising rights under subparagraph (C), no longer meets the requirements of subparagraph (A)(ii) and is not reasonably likely to meet those requirements in the near future, or

(ii) finds that a person that holds a permit under this paragraph for a marine mammal, or a person exercising rights under subparagraph (C), no longer meets the requirements of subparagraph (A) (i) or (iii) and is not reasonably likely to meet those requirements in the near future,

the Secretary may revoke the permit in accordance with section 104(e), seize the marine mammal, or cooperate with other persons authorized to hold marine mammals under this Act for disposition of the marine mammal. The Secretary may recover from the person expenses incurred by the Secretary for that seizure.

(E) No marine mammal held pursuant to a permit issued under subparagraph (A), or by a person exercising rights under subparagraph (C), may be sold, purchased, exported, or transported unless the Secretary is notified of such action no later than 15 days before such action, and such action is for purposes of public display, scientific research, or enhancing the survival or recovery of a species or stock. The Secretary may only require the notification to include the information required for the inventory established under paragraph (10).

(3)(A) The Secretary may issue a permit under this paragraph for scientific research purposes to an applicant which submits with its permit application information indicating that the taking is required to further a bona fide scientific purpose. The Secretary may issue a permit under this paragraph before the end of the public review and comment period required under subsection (d)(2) if delaying issuance of the permit could result in injury to a species, stock, or individual, or in loss of unique research opportunities.

(B) No permit issued for purposes of scientific research shall authorize the lethal taking of a marine mammal unless the applicant demonstrates that a nonlethal method of conducting the research is not feasible. The Secretary shall not issue a permit for research which involves the lethal taking of a marine mammal from a species or stock that is depleted, unless the Secretary determines that the results of such research will directly benefit that species or stock, or that such research fulfills a critically important research need.

(C) Not later than 120 days after the date of enactment of the Marine Mammal Protection Act Amendments of 1994 [August 28, 1994], the Secretary shall issue a general authorization and implementing regulations allowing bona fide scientific research that may result only in taking by Level B harassment of a marine mammal. Such authorization shall apply to persons which submit, by 60 days before commencement of such research, a letter of intent via certified mail to the Secretary containing the following:

- (i) The species or stocks of marine mammals which may be harassed.
- (ii) The geographic location of the research.
- (iii) The period of time over which the research will be conducted.
- (iv) The purpose of the research, including a description of how the definition of bona fide research as established under this Act would apply.
- (v) Methods to be used to conduct the research.

Not later than 30 days after receipt of a letter of intent to conduct scientific research under the general authorization, the Secretary shall issue a letter to the applicant confirming that the general authorization applies, or, if the proposed research is likely to result in the taking (including Level A harassment) of a marine mammal, shall notify the applicant that subparagraph (A) applies.

(4)(A) A permit may be issued for enhancing the survival or recovery of a species or stock only with respect to a species or stock for which the Secretary, after consultation with the Marine Mammal Commission and after notice and opportunity for public comment, has first determined that—

(i) taking or importation is likely to contribute significantly to maintaining or increasing distribution or numbers necessary to ensure the survival or recovery of the species or stock; and

(ii) taking or importation is consistent (I) with any conservation plan adopted by the Secretary under section 115(b) of this title or any recovery plan developed under section 4(f) of the Endangered Species Act of 1973 for the species or stock, or (II) if there is no conservation or recovery plan in place, with the Secretary's evaluation of actions required to enhance the survival or recovery of the species or stock in light to the factors that would be addressed in a conservation plan or a recovery plan.

(B) A permit issued in accordance with this paragraph may allow the captive maintenance of a marine mammal from a depleted species or stock only if the Secretary—

(i) determines that captive maintenance is likely to contribute to the survival or recovery of the species or stock by maintaining a viable gene pool, increasing productivity, providing biological information, or establishing animal reserves;

(ii) determines that the expected benefit to the affected species or stock outweighs the expected benefit of alternatives which do not require removal of animals from the wild; and

(iii) requires that the marine mammal or its progeny be returned to the natural habitat of the species or stock as soon as feasible, consistent with the objectives of any applicable conservation plan or recovery plan, or of any evaluation by the Secretary under subparagraph (A).

The Secretary may allow the public display of such a marine mammal only if the Secretary determines that such display is incidental to the authorized maintenance and will not interfere with the attainment of the survival or recovery objectives.

(5)(A) The Secretary may issue a permit for the importation of polar bear parts (other than internal organs) taken in sport hunts in Canada to an applicant which submits with its permit application proof that the polar bear was legally harvested in Canada by the applicant. Such a permit shall be issued if the Secretary, in consultation with the Marine Mammal Commission and after notice and opportunity for public comment, finds that—

(i) Canada has a monitored and enforced sport hunting program consistent with the purposes of the Agreement on the Conservation of Polar Bears;

(ii) Canada has a sport hunting program based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level;

(iii) the export and subsequent import are consistent with the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora and other international agreements and conventions; and

(iv) the export and subsequent import are not likely to contribute to illegal trade in bear parts.

(B) The Secretary shall establish and charge a reasonable fee for permits issued under this paragraph. All fees collected under this paragraph shall be available to the Secretary until expended for use in developing and implementing cooperative research and management programs for the conservation of polar bears in Alaska and Russia pursuant to section 113(d).

(C)(i) The Secretary shall undertake a scientific review of the impact of permits issued under this paragraph on the polar bear population stocks in Canada within 2 years after the date of enactment of this paragraph [April 30, 1996]. The Secretary shall provide an opportunity for public comment during the course of such review, and shall include a response to such public comment in the final report on such review.

(ii) The Secretary shall not issue permits under this paragraph after September 30, 1996, if the Secretary determines, based on the scientific review, that the issuance of permits under this paragraph is having a significant adverse impact on the polar bear population stocks in Canada. The Secretary may review such determination annually thereafter, in light of the best scientific information available, and shall complete the review not later than January 31 in any year a review is undertaken. The Secretary may issue permits under this paragraph whenever the Secretary determines, on the basis of such annual review, that the issuance of permits under this paragraph is not having a significant adverse impact on the polar bear population stocks in Canada.

(D) The Secretary of the Interior shall, expeditiously after the expiration of the applicable 30 day period under subsection (d)(2), issue a permit for the importation of polar bear parts (other than internal organs) from polar bears taken in sport hunts in Canada before the date of enactment of the Marine Mammal Protection Act Amendments of 1994 [April 30, 1994], to each applicant who submits, with the permit application, proof that the polar bear was legally harvested in Canada by the applicant. The Secretary shall issue such permits without regard to the provisions of subparagraphs (A) and (C)(ii) of this paragraph, subsection (d)(3) of this section, and sections 101 and 102. This subparagraph shall not apply to polar bear parts that were imported before the effective date of this subparagraph [June 12, 1997].

(6) A permit may be issued for photography for educational or commercial purposes involving marine mammals in the wild only to an applicant which submits with its permit application information indicating that the taking will be limited to Level B harassment, and the manner in which the products of such activities will be made available to the public.

(7) Upon request by a person for a permit under paragraph (2), (3), or (4) for a marine mammal which is in the possession of any person authorized to possess it under this Act and which is determined under guidance under section 402(a) not to be releasable to the wild, the Secretary shall issue the permit to the person requesting the permit if that person—

(A) meets the requirements of clauses (i), (ii), and (iii) of paragraph (2)(A), in the case of a request for a permit under paragraph (2);

(B) meets the requirements of paragraph (3), in the case of a request for a permit under that paragraph; or

(C) meets the requirements of paragraph (4), in the case of a request for a permit under that paragraph.

(8)(A) No additional permit or authorization shall be required to possess, sell, purchase, transport, export, or offer to sell or purchase the progeny of marine mammals taken or imported under this subsection, if such possession, sale, purchase, transport, export, or offer to sell or purchase is—

(i) for the purpose of public display, and by or to, respectively, a person which meets the requirements of clauses (i), (ii), and (iii) of paragraph (2)(A);

(ii) for the purpose of scientific research, and by or to, respectively, a person which meets the requirements of paragraph (3); or

(iii) for the purpose of enhancing the survival or recovery of a species or stock, and by or to, respectively, a person which meets the requirements of paragraph (4).

(B)(i) A person which has a permit under paragraph (2), or a person exercising rights under paragraph (2)(C), which has possession of a marine mammal that gives birth to progeny shall—

(I) notify the Secretary of the birth of such progeny within 30 days after the date of birth; and

(II) notify the Secretary of the sale, purchase, or transport of such progeny no later than 15 days before such action.

(ii) The Secretary may only require notification under clause (i) to include the information required for the inventory established under paragraph (10).

(C) Any progeny of a marine mammal born in captivity before the date of the enactment of the Marine Mammal Protection Act Amendments of 1994 [April 30, 1994] and held in captivity for the purpose of public display shall be treated as though born after that date of enactment.

(9) No marine mammal may be exported for the purpose of public display, scientific research, or enhancing the survival or recovery of a species or stock unless the receiving facility meets standards that are comparable to the requirements that a person must meet to receive a permit under this subsection for that purpose.

(10) The Secretary shall establish and maintain an inventory of all marine mammals possessed pursuant to permits issued under paragraph (2)(A), by persons exercising rights under paragraph (2)(C), and all progeny of such marine mammals. The inventory shall contain, for each marine mammal, only the following information which shall be provided by a person holding a marine mammal under this Act:

(A) The name of the marine mammal or other identification.

(B) The sex of the marine mammal.

(C) The estimated or actual birth date of the marine mammal.

(D) The date of acquisition or disposition of the marine mammal by the permit holder.

(E) The source from whom the marine mammal was acquired including the location of the take from the wild, if applicable.

(F) If the marine mammal is transferred, the name of the recipient.

(G) A notation if the animal was acquired as the result of a stranding.

(H) The date of death of the marine mammal and the cause of death when determined.

(d) [APPLICATION PROCEDURES; NOTICE; HEARING; REVIEW.] —

(1) The Secretary shall prescribe such procedures as are necessary to carry out this section, including the form and manner in which application for permits may be made.

(2) The Secretary shall publish notice in the Federal Register of each application made for a permit under this section. Such notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data or views, with respect to the taking or importation proposed in such application.

(3) The applicant for any permit under this section must demonstrate to the Secretary that the taking or importation of any marine mammal under such permit will be consistent with the purposes of this Act and the applicable regulations established under section 103 of this title.

(4) If within thirty days after the date of publication of notice pursuant to paragraph (2) of this subsection with respect to any application for a permit any interested party or parties request a hearing in connection therewith, the Secretary may, within sixty days following such date of publication, afford to such party or parties an opportunity for such a hearing.

(5) As soon as practicable (but not later than thirty days) after the close of the hearing or, if no hearing is held, after the last day on which data, or views, may be submitted pursuant to paragraph (2) of this subsection, the Secretary shall (A) issue a permit containing such terms and conditions as he deems appropriate, or (B) shall deny issuance of a permit. Notice of the decision of the Secretary to issue or to deny any permit under this paragraph must be published in the Federal Register within ten days after the date of issuance or denial.

(6) Any applicant for a permit, or any party opposed to such permit, may obtain judicial review of the terms and conditions of any permit issued by the Secretary under this section or of his refusal to issue such a permit. Such review, which shall be pursuant to chapter 7 of Title 5, United States Code, may be initiated by filing a petition for review in the United States district court for the district wherein the applicant for a permit resides, or has his principal place of business, or in the United States District Court for the District of Columbia, within sixty days after the date on which such permit is issued or denied.

(e) [MODIFICATION, SUSPENSION, AND REVOCATION.] —

(1) The Secretary may modify, suspend, or revoke in whole or part any permit issued by him under this section—

(A) in order to make any such permit consistent with any change made after the date of issuance of such permit with respect to any applicable regulation prescribed under section 103 of this title,

(B) in any case in which a violation of the terms and conditions of the permit is found, or

(C) if, in the case of a permit under subsection (c)(5) authorizing importation of polar bear parts, the Secretary, in consultation with the appropriate authority in Canada, determines that the sustainability of Canada's polar bear population stocks are being adversely affected or that sport hunting may be having a detrimental effect on maintaining polar bear population stocks throughout their range.

(2) Whenever the Secretary shall propose any modification, suspension, or revocation of a permit under this subsection, the permittee shall be afforded opportunity, after due notice, for a hearing by the Secretary with respect to such proposed modification, suspension, or revocation. Such proposed action by the Secretary shall not take effect until a decision is issued by him after such hearing. Any action taken by the Secretary after such a hearing is subject to judicial review on the same basis as is any action taken by him with respect to a permit application under paragraph (5) of subsection (d) of this section.

(3) Notice of the modification, suspension, or revocation of any permit by the Secretary shall be published in the Federal Register within ten days from the date of the Secretary's decision.

(f) [POSSESSION OF PERMIT BY ISSUEE OR HIS AGENT.] — Any permit issued under this section must be in the possession of the person to whom it is issued (or an agent of such person) during—

(1) the time of the authorized or taking importation;⁵

(2) the period of any transit of such person or agent which is incident to such taking or importation; and

(3) any other time while any marine mammal taken or imported under such permit is in the possession of such person or agent.

A duplicate copy of the issued permit must be physically attached to the container, package, enclosure, or other means of containment, in which the marine mammal is placed for purposes of storage, transit, supervision, or care.

(g) [FEES.] — The Secretary shall establish and charge a reasonable fee for permits issued under this section.

(h) [GENERAL PERMITS.] — (1) Consistent with the regulations prescribed pursuant to section 103 of this title and to the requirements of section 101 of this title, the Secretary may issue an annual permit to a United States purse seine fishing vessel for the taking of such marine mammals, and shall issue regulations to cover the use of any such annual permits.

(2) Such annual permits for the incidental taking of marine mammals in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean shall be governed by section 306 of this Act, subject to the regulations issued pursuant to section 303 of this Act.

(3)(A) The Secretary shall, commencing on January 1, 1985, undertake a scientific research program to monitor for at least five consecutive years, and periodically as necessary thereafter, the indices of abundance and trends of marine mammal population stocks which are incidentally taken in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean.

(B) If the Secretary determines, on the basis of the best scientific information available (including that obtained under the monitoring program), that the incidental taking of marine mammals permitted under the general permit referred to in paragraph (2) is having a significant adverse effect on a marine mammal population stock, the Secretary shall take such action as is necessary, after notice and an opportunity for an agency hearing on the record, to modify the applicable incidental take quotas or requirements for gear and fishing practices (or both such quotas and requirements) for such fishing so as to ensure that the marine mammal population stock is not significantly adversely affected by the incidental taking.

(C) For each year after 1984, the Secretary shall include in his annual report to the public and the Congress under section 103(f) a discussion of the proposed activities to be conducted each year as part of the monitoring program required by subparagraph (A).

(D) There are authorized to be appropriated to the Department of Commerce for purposes of carrying out the monitoring program required under this paragraph not to exceed \$4,000,000 for the period beginning October 1, 1984, and ending September 30, 1988.

Penalties

16 U.S.C. 1375

Sec. 105. (a)(1) Any person who violates any provision of this title or of any permit or regulation issued thereunder, except as provided in section 118, may be assessed a civil penalty by the Secretary of not more than \$10,000 for each such violation. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Each unlawful taking or importation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Secretary for good cause shown. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action.

(2) In any case involving an alleged unlawful importation of a marine mammal or marine mammal product, if such importation is made by an individual for his own personal or family use (which does not include importation as an accommodation to others or for sale or other commercial use), the Secretary may, in lieu of instituting a proceeding under paragraph (1), allow the individual to abandon the mammal or product, under procedures to be prescribed by the Secretary, to the enforcement officer at the port of entry.

(b) Any person who knowingly violates any provision of this title or of any permit or regulation issued thereunder (except as provided in section 118) shall, upon conviction, be fined not more than \$20,000 for each such violation, or imprisoned for not more than one year, or both.

Disposition of Fines

16 U.S.C. 1375a^{AA}

Sec. [] Hereafter, all fines collected by the United States Fish and Wildlife Service for violations of the Marine Mammal Protection Act (16 U.S.C. 1362-1407) and implementing regulations shall be available to the Secretary, without further appropriation, to be used for the expenses of the United States Fish and Wildlife Service in administering activities for the protection and recovery of manatees, polar bears, sea otters, and walruses, and shall remain available until expended.

Vessel Fine, Cargo Forfeiture, and Rewards

16 U.S.C. 1376

Sec. 106. (a) [APPLICATION OF CONSISTENT PROVISIONS.] — Any vessel or other conveyance subject to the jurisdiction of the United States that is employed in any manner in the unlawful taking of any marine mammal shall have its entire cargo or the monetary value thereof subject to seizure and forfeiture. All provisions of law relating to the seizure, judicial forfeiture, and condemnation of cargo for violation of the customs laws, the disposition of such cargo, and the proceeds from the sale thereof, and the remission or mitigation of any such forfeiture, shall apply with respect to the cargo of any vessel or other conveyance seized in connection with the unlawful taking of a marine mammal insofar as such provisions of law are applicable and not inconsistent with the provisions of this title.

(b) [PENALTIES.] — Any vessel subject to the jurisdiction of the United States that is employed in any manner in the unlawful taking of any marine mammal shall be liable for a

civil penalty of not more than \$25,000. Such penalty shall be assessed by the district court of the United States having jurisdiction over the vessel. Clearance of a vessel against which a penalty has been assessed, from a port of the United States, may be withheld until such penalty is paid, or until a bond or otherwise satisfactory surety is posted. Such penalty shall constitute a maritime lien on such vessel which may be recovered by action in rem in the district court of the United States having jurisdiction over the vessel.

(c) [REWARD FOR INFORMATION LEADING TO CONVICTION.] — Upon the recommendation of the Secretary, the Secretary of the Treasury is authorized to pay an amount equal to one-half of the fine incurred but not to exceed \$2,500 to any person who furnishes information which leads to a conviction for a violation of this title. Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

Enforcement

16 U.S.C. 1377

Sec. 107. (a) [UTILIZATION OF PERSONNEL.] — Except as otherwise provided in this title, the Secretary shall enforce the provisions of this title. The Secretary may utilize, by agreement, the personnel, services, and facilities of any other Federal agency for purposes of enforcing this title.

(b) [STATE OFFICERS AND EMPLOYEES.] — The Secretary may also designate officers and employees of any State or of any possession of the United States to enforce the provisions of this title. When so designated, such officers and employees are authorized to function as Federal law enforcement agents for these purposes, but they shall not be held and considered as employees of the United States for the purposes of any laws administered by the Director of the Office of Personnel Management.

(c) [WARRANTS AND OTHER PROCESS FOR ENFORCEMENT.] — The judges of the district courts of the United States and the United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process, including warrants or other process issued in admiralty proceedings in United States district courts, as may be required for enforcement of this title and any regulations issued thereunder.

(d) [EXECUTION OF PROCESS; ARREST; SEARCH; SEIZURE.] — Any person authorized by the Secretary to enforce this title may execute any warrant or process issued by any officer or court of competent jurisdiction for the enforcement of this title. Such person so authorized may, in addition to any other authority conferred by law—

(1) with or without warrant or other process, arrest any person committing in his presence or view a violation of this title or the regulations issued thereunder;

(2) with a warrant or other process, or without a warrant if he has reasonable cause to believe that a vessel, other conveyance, or container subject to the jurisdiction of the United States or any person on board is in violation of any provision of this title or the regulations issued thereunder, search such vessel, other conveyance, or container and arrest such person;

(3) seize the cargo of any vessel or other conveyance subject to the jurisdiction of the United States used or employed contrary to the provisions of this title or the regulations issued hereunder or which reasonably appears to have been so used or employed; and

(4) seize, whenever and wherever found, all marine mammals and marine mammal products taken or retained in violation of this title or the regulations issued thereunder and shall dispose of them in accordance with regulations prescribed by the Secretary.

(e) [DISPOSITION OF SEIZED CARGO.] —

(1) Whenever any cargo or marine mammal or marine mammal product is seized pursuant to this section, the Secretary shall expedite any proceedings commenced under section 105(a) or (b) of this title. All marine mammals or marine mammal products or other cargo so seized shall be held by any person authorized by the Secretary pending disposition of such proceedings. The owner or consignee of any such marine mammal or marine mammal product or other cargo so seized shall, as soon as practicable following such seizure, be notified of that fact in accordance with regulations established by the Secretary.

(2) The Secretary may, with respect to any proceeding under section 105(a) or (b) of this title, in lieu of holding any marine mammal or marine mammal product or other cargo, permit the person concerned to post bond or other surety satisfactory to the Secretary pending the disposition of such proceeding.

(3)(A) Upon the assessment of a penalty pursuant to section 105(a) of this title, all marine mammals and marine mammal products or other cargo seized in connection therewith may be proceeded against in any court of competent jurisdiction and forfeited to the Secretary for disposition by him in such manner as he deems appropriate.

(B) Upon conviction for violation of section 105(b) of this title, all marine mammals and marine mammal products seized in connection therewith shall be forfeited to the Secretary for disposition by him in such manner as he deems appropriate. Any other property or item so seized may, at the discretion of the court, be forfeited to the United States or otherwise disposed of.

(4) If with respect to any marine mammal or marine mammal product or other cargo so seized—

(A) a civil penalty is assessed under section 105(a) of this title and no judicial action is commenced to obtain the forfeiture of such mammal or product within thirty days after such assessment, such marine mammal or marine mammal product or other cargo shall be immediately returned to the owner or the consignee; or

(B) no conviction results from an alleged violation of section 105(b) of this title, such marine mammal or marine mammal product or other cargo shall immediately be returned to the owner or consignee if the Secretary does not, with⁶ thirty days after the final disposition of the case involving such alleged violation, commence proceedings for the assessment of a civil penalty under section 105(a) of this title.

International Program

16 U.S.C. 1378

Sec. 108. (a) [DUTIES OF SECRETARY.] — The Secretary, through the Secretary of State, shall—

(1) initiate negotiations as soon as possible for the development of bilateral or multinational agreements with other nations for the protection and conservation of all marine mammals covered by this Act;

(2) initiate—

(A) negotiations as soon as possible with all foreign governments which are engaged in, or which have persons or companies engaged in, commercial fishing operations which are found by the Secretary to be unduly harmful to any species or population stock of marine mammal, for the purpose of entering into bilateral and multilateral treaties with such countries to protect marine mammals, with the Secretary of State to prepare a draft agenda relating to this matter for discussion at appropriate international meetings and forums;

(B) discussions with foreign governments whose vessels harvest yellowfin tuna with purse seines in the eastern tropical Pacific Ocean, for the purpose of concluding, through the Inter-American Tropical Tuna Commission or such other bilateral or multilateral institutions as may be appropriate, international arrangements for the conservation of marine mammals taken incidentally in the course of harvesting such tuna, which should include provisions for (i) cooperative research into alternative methods of locating and catching yellowfin tuna which do not involve the taking of marine mammals, (ii) cooperative research on the status of affected marine mammal population stocks, (iii) reliable monitoring of the number, rate, and species of marine mammals taken by vessels of harvesting nations, (iv) limitations on incidental take levels based upon the best scientific information available, and (v) the use of the best marine mammal safety techniques and equipment that are economically and technologically practicable to reduce the incidental kill and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate;

(C) negotiations to revise the Convention for the Establishment of an Inter-American Tropical Tuna Commission (1 U.S.T. 230; TIAS 2044) which will incorporate--

(i) the conservation and management provisions agreed to by the nations which have signed the Declaration of Panama and in the Straddling Fish Stocks and Highly Migratory Fish Stocks Agreement, as opened for signature on December 4, 1995; and

(ii) a revised schedule of annual contributions to the expenses of the Inter-American Tropical Tuna Commission that is equitable to participating nations; and

(D) discussions with those countries participating, or likely to participate, in the International Dolphin Conservation Program, for the purpose of identifying sources of funds needed for research and other measures promoting effective protection of dolphins, other marine species, and the marine ecosystem;

(3) encourage such other agreements to promote the purposes of this Act with other nations for the protection of specific ocean and land regions which are of special significance to the health and stability of marine mammals;

(4) initiate the amendment of any existing international treaty for the protection and conservation of any species of marine mammal to which the United States is a party in order to make such treaty consistent with the purposes and policies of this Act;

(5) seek the convening of an international ministerial meeting on marine mammals before July 1, 1973, for the purposes of (A) the negotiation of a binding international convention for the protection and conservation of all marine mammals, and (B) the implementation of paragraph (3) of this section; and

(6) provide to the Congress by not later than one year after the date of the enactment of this Act [October 21, 1973] a full report on the results of his efforts under this section.

(b) [CONSULTATIONS AND STUDIES CONCERNING NORTH PACIFIC FUR SEALS.] —

(1) In addition to the foregoing, the Secretary shall—

(A) in consultation with the Marine Mammal Commission established by section 201 of this Act, undertake a study of the North Pacific fur seals to determine whether herds of such seals subject to the jurisdiction of the United States are presently at their optimum sustainable population and what population trends are evident; and

(B) in consultation with the Secretary of State, promptly undertake a comprehensive study of the provisions of this Act, as they relate to North Pacific fur seals, and the provisions of the North Pacific Fur Seal Convention signed on February 9, 1957, as extended (hereafter referred to in this subsection as the "Convention"), to determine what modifications, if any, should be made to the provisions of the Convention, or of this Act, or both, to make the Convention and this Act consistent with each other.

The Secretary shall complete the studies required under this paragraph not later than one year after the date of enactment of this Act [October 21, 1973] and shall immediately provide copies thereof to Congress.

(2) If the Secretary finds—

(A) as a result of the study required under paragraph (1)(A) of this subsection, that the North Pacific fur seal herds are below their optimum sustainable population and are not trending upward toward such level, or have reached their optimum sustainable population but are commencing a downward trend, and believes the herds to be in danger of depletion; or

(B) as a result of the study required under paragraph (1)(B) of this subsection, that modifications of the Convention are desirable to make it and this Act consistent;

he shall, through the Secretary of State, immediately initiate negotiations to modify the Convention so as to (i) reduce or halt the taking of seals to the extent required to assure that such herds attain and remain at their optimum sustainable population, or (ii) make the Convention and this Act consistent; or both, as the case may be. If negotiations to so modify the Convention are unsuccessful, the Secretary shall, through the Secretary of State, take such steps as may be necessary to continue the existing Convention beyond its present termination date so as to continue to protect and conserve the North Pacific fur seals and to prevent a return to pelagic sealing.

(c) [DESCRIPTION OF ANNUAL RESULTS OF DISCUSSIONS; PROPOSALS FOR FURTHER ACTION.] — The Secretary shall include a description of the annual results of discussions initiated and conducted pursuant to subsection (a)(2)(B), as well as any proposals for further action to achieve the purposes of that subsection, in the report required under section 103(f) of this title.

Federal Cooperation With States

16 U.S.C. 1379

Sec. 109. (a) [STATE ENFORCEMENT OF STATE LAWS OR REGULATIONS PROHIBITED WITHOUT TRANSFER TO STATE OF MANAGEMENT AUTHORITY BY SECRETARY.] — No State may enforce, or attempt to enforce, any State law or regulation relating to the taking of any species (which term for purposes of this section includes any population stock) of marine mammal within the State unless the Secretary has transferred authority for the conservation and management of that species (hereinafter referred to in this section as "management authority") to the State under subsection (b)(1).

(b) [FINDINGS PREREQUISITE TO TRANSFER OF AUTHORITY; STATE PROGRAM; IMPLEMENTATION.] —

(1) Subject to paragraph (2) and subsection (f), the Secretary shall transfer management authority for a species of marine mammal to a State if the Secretary finds, after notice and opportunity for public comment, that the State has developed and will implement a program for the conservation and management of the species that—

(A) is consistent with the purposes, policies, and goals of this Act and with international treaty obligations;

(B) requires that all taking of the species be humane;

(C) does not permit the taking of the species unless and until—

(i) the State has determined, under a process consistent with the standards set forth in subsection (c)—

(I) that the species is at its optimum sustainable population (hereinafter in this section referred to as "OSP"), and

(II) the maximum number of animals of that species that may be taken without reducing the species below its OSP, and

(ii) the determination required under clause (i) is final and implemented under State law, and, if a cooperative allocation agreement for the species is required under subsection (d)(1), such an agreement is implemented;

(D) does not permit the taking of a number of animals of the species that exceeds the maximum number determined pursuant to subparagraph (C)(i)(II), and, in the case of taking for subsistence uses (as defined in subsection (f)(2)), does not permit the taking of a number of animals that would be inconsistent with the maintenance of the species at its OSP;

(E) does not permit the taking of the species for scientific research, public display, or enhancing the survival or recovery of a species or stock, except for taking for such purposes that is undertaken by, or on behalf of, the State;

(F) provides procedures for acquiring data, and evaluating such data and other new evidence, relating to the OSP of the species, and the maximum take that would maintain the species at that level, and, if required on the basis of such evaluation, for amending determinations under subparagraph (C)(i);

(G) provides procedures for the resolution of differences between the State and the Secretary that might arise during the development of a cooperative allocation agreement under subsection (d)(1); and

(H) provides for the submission of an annual report to the Secretary regarding the administration of the program during the reporting period.

(2) During the period between the transfer of management authority for a species to a State under paragraph (1) and the time at which the implementation requirements under paragraph (1)(C)(ii) are complied with—

(A) the State program shall not apply with respect to the taking of the species within the State for any purpose, or under any condition, provided for under section 101; and

(B) the Secretary shall continue to regulate, under this title, all takings of the species within the State.

(3) After the determination required under paragraph (1)(C)(i) regarding a species is final and implemented under State law and after a cooperative allocation agreement described in subsection (d)(1), if required, is implemented for such species—

(A) such determination shall be treated, for purposes of applying this title beyond the territory of the State, as a determination made in accordance with section 103 and as an applicable waiver under section 101(a)(3);

(B) the Secretary shall regulate, without regard to this section other than the allocations specified under such an agreement, the taking of the species—

(i) incidentally in the course of commercial fishing operations (whether provided for under section 101(a)(2) or (4)), or in the course of other specified activities provided for under section 101(a)(5), in the zone described in section 3(14)(B), and

(ii) for scientific research, public display, or enhancing the survival or recovery of a species or stock (other than by, or on behalf of, the State), except that any taking authorized under a permit issued pursuant to section 101(a)(1) after the date of the enactment of the 1981 amendment to this sub-section [October 9, 1981] allowing the removal of live animals from habitat within the State shall not be effective if the State agency disapproves, on or before the date of issuance of the permit, such taking as being inconsistent with the State program; and

(C) section 101(b) shall not apply.

(c) [STANDARDS WITH WHICH STATE PROCESS MUST COMPLY.] — The State process required under subsection (b)(1)(C) must comply with the following standards:

(1) The State agency with management authority for the species (hereinafter in this section referred to as the "State agency") must make an initial determination regarding the factors described in clause (i) of that subsection. The State agency must identify, and make available to the public under reasonable circumstances, the documentation supporting such initial determination. Unless request for a hearing under paragraph (2) regarding the initial determination is timely made, the initial determination shall be treated as final under State law.

(2) The State agency shall provide opportunity, at the request of any interested party, for a hearing with respect to the initial determination made by it under paragraph (1) at which interested parties may—

(A) present oral and written evidence in support of or against such determination; and

(B) cross-examine persons presenting evidence at the hearing.

The State agency must give public notice of the hearing and make available to the public within a reasonable time before commencing the hearing a list of the witnesses for the

State and a general description of the documentation and other evidence that will be relied upon by such witnesses.

(3) The State agency, solely on the basis of the record developed at a hearing held pursuant to paragraph (2), must make a decision regarding its initial determination under paragraph (1) and shall include with the record a statement of the findings and conclusions, and the reason or basis therefor, on all material issues.

(4) Opportunity for judicial review of the decision made by the State agency on the record under paragraph (3), under scope of review equivalent to that provided for in section 706(2) (A) through (E) of Title 5, United States Code, must be available under State law. The Secretary may not initiate judicial review of any such decision.

(d) [COOPERATIVE ALLOCATION AGREEMENTS.] —

(1) If the range of a species with respect to which a determination under paragraph (1)(C)(i) of subsection (b) is made extends beyond the territorial waters of the State, the State agency and the Secretary (who shall first coordinate with the Marine Mammal Commission and the appropriate Regional Fishery Management Council established under section 302 of the Act of April 13, 1976 (16 U.S.C. 1852)) shall enter into a cooperative allocation agreement providing procedures for allocating, on a timely basis, such of the number of animals, as determined under paragraph (1)(C)(i)(II) of subsection (b), as may be appropriate with priority of allocation being given firstly to taking for subsistence uses in the case of the State of Alaska, and secondly to taking for purposes provided for under section 101(a) within the zone described in section 3(14)(B).⁷

(2) If the State agency requests the Secretary to regulate the taking of a species to which paragraph (1) applies within the zone described in section 3(14)(B) for subsistence uses or for hunting, or both, in a manner consistent with the regulation by the State agency of such taking within the State, the Secretary shall adopt, and enforce within such zone, such of the State agency's regulatory provisions as the Secretary considers to be consistent with his administration of section 101(a) within such zone. The Secretary shall adopt such provisions through the issuance of regulations under section 553 of Title 5, United States Code, and with respect to such issuance the Regulatory Flexibility Act, the Paperwork Reduction Act, Executive Order No. 12291, dated February 17, 1981, and the thirty-day notice requirement in subsection (d) of such section 553 shall not apply. For purposes of sections 105, 106, and 107, such regulations shall be treated as having been issued under this title.

(e) [REVOCATION OF TRANSFER OF MANAGEMENT AUTHORITY.] —

(1) Subject to paragraph (2), the Secretary shall revoke, after opportunity for a hearing, any transfer of management authority made to a State under subsection (b)(1) if the Secretary finds that the State program for the conservation and management of the species concerned is not being implemented, or is being implemented in a manner inconsistent with the provisions of this section or the provisions of the program. The Secretary shall also establish a procedure for the voluntary return by a State to the Secretary of species management authority that was previously transferred to the State under subsection (b)(1).

(2)(A) The Secretary may not revoke a transfer of management authority under paragraph (1) unless—

(i) The Secretary provides to the State a written notice of intent to revoke together with a statement, in detail, of those actions, or failures to act, on which such intent is based; and

(ii) during the ninety-day period after the date of the notice of intent to revoke—

(I) the Secretary provides opportunity for consultation between him and the State concerning such State actions or failures to act and the remedial measures that should be taken by the State, and

(II) the State does not take such remedial measures as are necessary, in the judgment of the Secretary, to bring its conservation and management program, or the administration or enforcement of the program, into compliance with the provisions of this section.

(B) When a revocation by the Secretary of a transfer of management authority to a State becomes final, or the State voluntarily returns management authority to the Secretary, the Secretary shall regulate the taking, and provide for the conservation and management, of the species within the State in accordance with the provisions of this Act (and in the case of Alaskan Natives, section 101(b) and subsection (i) of this section shall apply upon such revocation or return of management authority).

(f) [TRANSFER OF MANAGEMENT AUTHORITY TO STATE OF ALASKA.] —

(1) The Secretary may not transfer management authority to the State of Alaska under subsection (b)(1) for any species of marine mammal unless—

(A) the State has adopted and will implement a statute and regulations that insure that the taking of the species for subsistence uses—

- (i) is accomplished in a nonwasteful manner,
- (ii) will be the priority consumptive use of the species, and
- (iii) if required to be restricted, such restriction will be based upon—

(I) the customary and direct dependence upon the species as the mainstay of livelihood,

(II) local residency, and

(III) the availability of alternative resources; and

(B) the State has adopted a statute or regulation that requires that any consumptive use of marine mammal species, other than for subsistence uses, will be authorized during a regulatory year only if the appropriate agency first makes findings, based on an administrative record before it, that—

(i) such use will have no significant adverse impact upon subsistence uses of the species, and

(ii) the regulation of such use, including, but not limited to, licensing of marine mammal hunting guides and the assignment of guiding areas, will, to the maximum extent practicable, provide economic opportunities for the residents of the rural coastal villages of Alaska who engage in subsistence uses of that species.

(2) For purposes of paragraph (1), the term "subsistence uses" means the customary and traditional uses by rural Alaska residents of marine mammals for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of marine mammals taken for personal or family consumption; and for barter, or sharing for personal or family consumption. As used in this paragraph—

(A) The term "family" means all persons related by blood, marriage, or adoption, or any person living within a household on a permanent basis.

(B) The term "barter" means the exchange of marine mammals or their parts, taken for subsistence uses—

- (i) for other wildlife or fish or their parts, or

(ii) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

(g) [ENVIRONMENTAL IMPACT STATEMENT NOT REQUIRED.] — Neither the transfer of management authority to a State under subsection (b)(1), nor the revocation or voluntary return of such authority under subsection (e), shall be deemed to be an action for which an environmental impact statement is required under section 102 of the National Environmental Policy Act of 1969.

(h) [TAKING OF MARINE MAMMALS AS PART OF OFFICIAL DUTIES.] —

(1) Nothing in this title or title IV shall prevent a Federal, State, or local government official or employee or a person designated under section 112(c) from taking, in the course of his or her duties as an official, employee, or designee, a marine mammal in a humane manner (including euthanasia) if such taking is for—

- (A) the protection or welfare of the mammal,
- (B) the protection of the public health and welfare, or
- (C) the nonlethal removal of nuisance animals.

(2) Nothing in this title shall prevent the Secretary or a person designated under section 112(c) from importing a marine mammal into the United States if such importation is necessary to render medical treatment that is not otherwise available.

(3) In any case in which it is feasible to return to its natural habitat a marine mammal taken or imported under circumstances described in this subsection, steps to achieve that result shall be taken.

(i) [REGULATIONS COVERING TAKING OF MARINE MAMMALS BY ALASKAN NATIVES.] — The Secretary may (after providing notice thereof in the Federal Register and in newspapers of general circulation, and through appropriate electronic media, in the affected area and providing opportunity for a hearing thereon in such area) prescribe regulations requiring the marking, tagging, and reporting of animals taken pursuant to section 101(b).

(j) [GRANTS TO DEVELOP OR ADMINISTER STATE CONSERVATION AND MANAGEMENT PROGRAMS.] — The Secretary may make grants to States to assist them—

(1) in developing programs, to be submitted for approval under subsection (b), for the conservation and management of species of marine mammals; and

(2) in administering such programs if management authority for such species is transferred to the State under such subsection.

Grants made under this subsection may not exceed 50 per centum of the costs of developing a State program before Secretarial approval, or of administering the program thereafter.

(k) [DELEGATION OF ADMINISTRATION AND ENFORCEMENT TO STATES.] — The Secretary is authorized and directed to enter into cooperative arrangements with the appropriate officials of any State for the delegation to such State of the administration and enforcement of this title: *Provided*, That any such arrangement shall contain such provisions as the Secretary deems appropriate to insure that the purposes and policies of this Act will be carried out.

(l) [AUTHORIZATION OF APPROPRIATIONS.] —

(1) There are authorized to be appropriated to the Department of the Interior, for the purposes of carrying out this section, not to exceed \$400,000 for each of the fiscal years ending September 30, 1979, September 30, 1980, and September 30, 1981.

(2) There are authorized to be appropriated to the Department of Commerce, for the purposes of carrying out this section, not to exceed \$225,000 for each of the fiscal years ending September 30, 1979, September 30, 1980, and September 30, 1981.

Marine Mammal Research Grants

16 U.S.C. 1380

Sec. 110. (a) [AUTHORIZATION; RESEARCH CONCERNING YELLOWFIN TUNA; ANNUAL REPORT.] — The Secretary is authorized to make grants, or to provide financial assistance in such other form as he deems appropriate, to any Federal or State agency, public or private institution, or other person for the purpose of assisting such agency, institution, or person to undertake research in subjects which are relevant to the protection and conservation of marine mammals. In carrying out this subsection, the Secretary shall undertake a program of, and shall provide financial assistance for, research into new methods of locating and catching yellowfin tuna without the incidental taking of marine mammals. The Secretary shall include a description of the annual results of research carried out under this section in the report required under section 103(f).

(b) [TERMS AND CONDITIONS.] — Any grant or other financial assistance provided by the Secretary pursuant to this section shall be subject to such terms and conditions as the Secretary deems necessary to protect the interests of the United States and shall be made after review by the Marine Mammal Commission.

(c) [GULF OF MAINE ECOSYSTEM PROTECTION.] —

(1) No later than 1 year after the date of enactment of the Marine Mammal Protection Act Amendments of 1994 [April 30, 1995], the Secretary of Commerce shall convene a regional workshop for the Gulf of Maine to assess human-caused factors affecting the health and stability of that marine ecosystem, of which marine mammals are a part. The workshop shall be conducted in consultation with the Marine Mammal Commission, the adjacent coastal States, individuals with expertise in marine mammal biology and ecology, representatives from environmental organizations, the fishing industry, and other appropriate persons. The goal of the workshop shall be to identify such factors, and to recommend a program of research and management to restore or maintain that marine ecosystem and its key components that—

(A) protects and encourages marine mammals to develop to the greatest extent feasible commensurate with sound policies of resource management;

(B) has as the primary management objective the maintenance of the health and stability of the marine ecosystems;

(C) ensures the fullest possible range of management options for future generations; and

(D) permits nonwasteful, environmentally sound development of renewable and nonrenewable resources.

(2) On or before December 31, 1995, the Secretary of Commerce shall submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science and Transportation of the Senate a report containing the results of the workshop under this subsection, proposed regulatory or research actions, and recommended legislative action.

(d) [BERING SEA ECOSYSTEM PROTECTION.] —

(1) The Secretary of Commerce, in consultation with the Secretary of the Interior, the Marine Mammal Commission, the State of Alaska, and Alaska Native organizations, shall, not later than 180 days after the date of enactment of the Marine Mammal Protection Act Amendments of 1994 [October 27, 1994], undertake a scientific research program to monitor the health and stability of the Bering Sea marine ecosystem and to resolve uncertainties concerning the causes of population declines of marine mammals, sea birds, and other living resources of that marine ecosystem. The program shall address the research recommendations developed by previous workshops on Bering Sea living marine resources, and shall include research on subsistence uses of such resources and ways to provide for the continued opportunity for such uses.

(2) To the maximum extent practicable, the research program undertaken pursuant to paragraph (1) shall be conducted in Alaska. The Secretary of Commerce shall utilize, where appropriate, traditional local knowledge and may contract with a qualified Alaska Native organization to conduct such research.

(3) The Secretary of Commerce, the Secretary of the Interior, and the Commission shall address the status and findings of the research program in their annual reports to Congress required by sections 103(f) and 204 of this Act.

Commercial Fisheries Gear Development

16 U.S.C. 1381

Sec. 111. (a) [RESEARCH AND DEVELOPMENT PROGRAM; REPORT TO CONGRESS; AUTHORIZATION OF APPROPRIATIONS.] — The Secretary of the department in which the National Oceanic and Atmospheric Administration is operating (hereafter referred to in this section as the "Secretary") is hereby authorized and directed to immediately undertake a program of research and development for the purpose of devising improved fishing methods and gear so as to reduce to the maximum extent practicable the incidental taking of marine mammals in connection with commercial fishing. At the end of the full twenty-four calendar month period following the date of the enactment of this Act [October 21, 1974], the Secretary shall deliver his report in writing to the Congress with respect to the results of such research and development. For the purposes of this section, there is hereby authorized to be appropriated the sum of \$1,000,000 for the fiscal year ending June 30, 1973, and the same amount for the next fiscal year. Funds appropriated for this section shall remain available until expended.

(b) [REDUCTION OF LEVEL OF TAKING OF MARINE MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATIONS.] — The Secretary, after consultation with the Marine Mammal Commission, is authorized and directed to issue, as soon as practicable, such regulations, covering the twenty-four-month period referred to in section 101(a)(2) of this title, as he deems necessary or advisable, to reduce to the lowest practicable level the taking of marine mammals incidental to commercial fishing operations. Such regulations shall be adopted pursuant to section 553 of Title 5, United States Code. In issuing such regulations, the Secretary shall take into account the results of any scientific research under subsection (a) of this section and, in each case, shall provide a reasonable time not exceeding four months for the persons affected to implement such regulations.

(c) [REDUCTION OF LEVEL OF TAKING OF MARINE MAMMALS IN TUNA FISHERY.] — Additionally, the Secretary and Secretary of State are directed to commence negotiations within the Inter-American Tropical Tuna Commission in order to effect essential compliance with the regulatory provisions of this Act so as to reduce to the maximum extent feasible the incidental taking of marine mammals by vessels involved in the tuna fishery. The Secretary and Secretary of State are further directed to request the Director of Investigations of the Inter-American Tropical Tuna Commission to make recommendations to all member nations of the Commission as soon as is practicable as to the utilization of methods and gear devised under subsection (a) of this section.

(d) [RESEARCH AND OBSERVATION.] — Furthermore, after timely notice and during the period of research provided in this section, duly authorized agents of the Secretary are hereby empowered to board and to accompany any commercial fishing vessel documented under the laws of the United States, there being space available, on a regular fishing trip for the purpose of conducting research or observing operations in regard to the development of improved fishing methods and gear as authorized by this section. Such research and observation shall be carried out in such manner as to minimize interference with fishing operations. The Secretary shall provide for the cost of quartering and maintaining such agents. No master, operator, or owner of such a vessel shall impair or in any way interfere with the research or observation being carried out by agents of the Secretary pursuant to this section.

Regulations and Administration

16 U.S.C. 1382

Sec. 112. (a) [CONSULTATION WITH FEDERAL AGENCIES.] — The Secretary, in consultation with any other Federal agency to the extent that such agency may be affected, shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this title.

(b) [COOPERATION BY FEDERAL AGENCIES.] — Each Federal agency is authorized and directed to cooperate with the Secretary, in such manner as may be mutually agreeable, in carrying out the purposes of this title.

(c) [CONTRACTS, LEASES, AND COOPERATIVE AGREEMENTS.] — The Secretary may enter into such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the purposes of this title or title IV and on such terms as he deems appropriate with any Federal or State agency, public or private institution, or other person.

(d) [ANNUAL REVIEW; SUSPENSION OF PROGRAM.] — The Secretary shall review annually the operation of each program in which the United States participates involving the taking of marine mammals on land. If at any time the Secretary finds that any such program cannot be administered on lands owned by the United States or in which the United States has an interest in a manner consistent with the purposes of ⁸ policies of this Act, he shall suspend the operation of that program and shall include in the annual report to the public and the Congress required under section 103(f) of this Act his reasons for such suspension, together with recommendations for such legislation as he deems necessary and appropriate to resolve the problem.

(e) [MEASURES TO ALLEVIATE IMPACTS ON STRATEGIC STOCKS.] — If the Secretary determines, based on a stock assessment under section 117 or other significant new information obtained under this Act, that impacts on rookeries, mating grounds, or other areas of similar ecological significance to marine mammals may be causing the decline or impeding the recovery of a strategic stock, the Secretary may develop and implement conservation or management measures to alleviate those impacts. Such measures shall be developed and implemented after consultation with the Marine Mammal Commission and the appropriate Federal agencies and after notice and opportunity for public comment.

Application to Other Treaties and Conventions

16 U.S.C. 1383

Sec. 113. (a) [IN GENERAL; WAIVER OF PENALTIES.] — The provisions of this title shall be deemed to be in addition to and not in contravention of the provisions of any existing international treaty, convention, or agreement, or any statute implementing the same, which may otherwise apply to the taking of marine mammals. Upon a finding by the Secretary that the provisions of any international treaty, convention, or agreement, or any statute implementing the same has been made applicable to persons subject to the provisions of this title in order to effect essential compliance with the regulatory provisions of this Act so as to reduce to the lowest practicable level the taking of marine mammals incidental to commercial fishing operations, section 105 of this title may not apply to such persons.

(b) [REVIEW OF EFFECTIVENESS OF AGREEMENT ON THE CONSERVATION OF POLAR BEARS.] — Not later than 1 year after the date of enactment of the Marine Mammal Protection Act Amendments of 1994 [April 30, 1995], the Secretary of the Interior shall, in consultation with the contracting parties, initiate a review of the effectiveness of the Agreement on the Conservation of Polar Bears, as provided for in Article IX of the Agreement, and establish a process by which future reviews shall be conducted.

(c) [REVIEW OF IMPLEMENTATION OF AGREEMENT ON THE CONSERVATION OF POLAR BEARS; REPORT.] — The Secretary of the Interior, in consultation with the Secretary of State and the Marine Mammal Commission, shall review the effectiveness of United States implementation of the Agreement on the Conservation of Polar Bears, particularly with respect to the habitat protection mandates contained in Article II. The Secretary shall report the results of this review to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than April 12, 1995.

(d) [CONSULTATION REGARDING AGREEMENT ON THE CONSERVATION OF POLAR BEARS IN ALASKA AND IN RUSSIA; REPORT.] — Not later than 6 months after the date of enactment of the Marine Mammal Protection Act Amendments of 1994 [October 30, 1994], the Secretary of the Interior, acting through the Secretary of State and in consultation with the Marine Mammal Commission and the State of Alaska, shall consult with the appropriate officials of the Russian Federation on the development and implementation of enhanced cooperative research and management programs for the conservation of polar bears in Alaska and Russia. The Secretary shall report the results of this consultation and provide periodic progress reports on the research and management programs to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science and Transportation of the Senate.

Interim Exemption for Commercial Fisheries

16 U.S.C. 1383a

Sec. 114. (a) [EFFECTIVE AND TERMINATION DATES OF PREEMPTIVE PROVISIONS; LAW GOVERNING INCIDENTAL TAKING OF MARINE MAMMALS IN COURSE OF COMMERCIAL YELLOWFIN TUNA FISHING.] —

(1) During the period beginning on the date of enactment of this section [November 23, 1988] and until superseded by regulations prescribed under section 118, or until September 1, 1995, whichever is earlier, except as provided in paragraph (2), the provisions of this section, rather than sections 101, 103, and 104, shall govern the incidental taking of marine mammals in the course of commercial fishing operations by persons using vessels of the United States and vessels which have valid fishing permits issued by the Secretary in

accordance with section 204(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1824(b)). In any event it shall be the immediate goal that the incidental kill or serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate.

(2) The provisions of this section other than subsection (e)(6)(A) shall not govern the incidental taking of marine mammals in the course of commercial yellowfin tuna fishing subject to section 104(h)(2) of this title.

(b) [PROPOSED AND FINAL LIST OF FISHERIES TAKING MARINE MAMMALS; PUBLICATION IN FEDERAL REGISTER; GRANT OF EXEMPTION; CONDITIONS; SUSPENSION OF GRANT OF EXEMPTION; ADMINISTRATION OF EXEMPTION PROVISIONS; FEES.] —

(1) The Secretary shall, after consultation with the Marine Mammal Commission—

(A) publish in the Federal Register, for public comment, not later than sixty days after the date of enactment of this section [January 23, 1989] a proposed list of those fisheries, along with a statement of the marine mammals and the approximate number of vessels or persons involved in each such fishery, that have—

- (i) frequent incidental taking of marine mammals;
- (ii) occasional incidental taking of marine mammals; or
- (iii) a remote likelihood of or no known incidental taking of marine mammals;

(B) publish in the Federal Register not later than one hundred and twenty days after the date of enactment of this section [March 24, 1989] a final list of the fisheries and other information required by paragraph (A), together with a summary of the provisions of this section and information sufficient to advise vessel owners on how to obtain an exemption and otherwise comply with the requirements of this section; and

(C) at least once each year thereafter, and at such other times as the Secretary considers appropriate, reexamine, based on information gathered from the program established under subsections (c), (d), (e), and (f), and other relevant sources and after notice and opportunity for public comment, the classification of fisheries and other determinations required under subparagraph (A) and publish in the Federal Register any necessary changes.

(2)(A) An exemption shall be granted by the Secretary in accordance with this section for a vessel engaged in a fishery identified under paragraph (1)(A) (i) or (ii), upon receipt by the Secretary of a completed registration form providing the name of the vessel owner, the name and description of the vessel, the fisheries in which it will be engaged, and such other information as the Secretary considers necessary. A decal or other physical evidence that the exemption is current and valid shall be issued by the Secretary at the time an exemption is granted, and so long as the exemption remains current and valid, shall be reissued annually thereafter.

(B) No exemption may be granted under this section to the owner of a vessel unless such vessel—

- (i) is a vessel of the United States; or
- (ii) has a valid fishing permit issued by the Secretary in accordance with section 204(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1824(b)).

(C) Notwithstanding any other provision of this title, exemptions granted under this section shall authorize the incidental taking of marine mammals, other than

California sea otters, from any species or stock, including a population stock designated as depleted, but shall not authorize the intentional lethal taking of any Steller sea lion, any cetacean, or any marine mammals from a population stock designated as depleted.

(3)(A) Beginning two hundred and forty days after the date of enactment of this section [July 22, 1989], each owner of a vessel engaged in any fishery identified under paragraph (1)(A) (i) or (ii) shall, in order to engage lawfully in that fishery—

(i) have registered with the Secretary in order to obtain for each such vessel owned an exemption for the purpose of incidentally taking marine mammals in accordance with this section;

(ii) ensure that a decal or such other physical evidence of a current and valid exemption as the Secretary may require is displayed on or is in the possession of the master of each such vessel; and

(iii) report as required by subsection (c).

(B) Any owner of a vessel receiving an exemption under this section for any fishery identified under paragraph (1)(A)(i) shall, as a condition of that exemption, take on board a natural resource observer if requested to do so by the Secretary.

(C) An owner of a vessel engaged in a fishery identified under paragraph (1)(A) (i) or (ii) who—

(i) fails to obtain from the Secretary an exemption under this section;

(ii) fails to maintain a current and valid exemption; or

(iii) fails to ensure that a decal or other physical evidence of such exemption issued by the Secretary is displayed on or is in possession⁹ of the master of the vessel,

and the master of any such vessel engaged in such fishery, shall be deemed to have violated this title, and shall be subject to the penalties of this title except in the case of unknowing violations before January 1, 1990.

(D) If the owner of a vessel has obtained and maintains a current and valid exemption from the Secretary under this section and meets the requirements set forth in this section, the owner of such vessel, and the master and crew members of the vessel, shall not be subject to the penalties set forth in this title for the incidental taking of marine mammals while such vessel is engaged in a fishery to which the exemption applies.

(E) Each owner of a vessel engaged in any fishery not identified in paragraph (1)(A) (i) or (ii), and the master and crew members of such a vessel, shall not be subject to the penalties set forth in this title for the incidental taking of marine mammals if such owner reports to the Secretary, in such form and manner as the Secretary may require, instances of lethal incidental taking in the course of that fishery.

(4) The Secretary shall suspend or revoke an exemption granted under this section and shall not issue a decal or other physical evidence of the exemption for any vessel until the owner of such vessel complies with the reporting requirements under subsection (c) and such requirements to take on board a natural resource observer under paragraph (3)(B) as are applicable to such vessel.

(5)(A) The Secretary shall develop, in consultation with the appropriate States, Regional Fishery Management Councils, and other interested parties, the means by which the granting and administration of exemptions under this section shall be integrated and coordinated, to the maximum extent practicable, with existing fishery licenses, registrations, and related programs.

(B) The Secretary shall utilize newspapers of general circulation, fishery trade associations, electronic media, and other means of advising commercial fishermen of the provisions of this section and the means by which they can comply with its requirements.

(C) The Secretary is authorized to charge a fee for the granting of an exemption under this subsection. The level of fees charged under this subparagraph shall not exceed the administrative costs incurred in granting an exemption. Fees collected under this subparagraph shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred in the granting and administration of exemptions under this section.

(c) [COMPILATION OF INFORMATION BY VESSEL OWNERS; CONTENTS.] — The owner of each vessel holding an exemption granted under subsection (b) of this section shall regularly compile information which shall be used in a report to be submitted to the Secretary at the close of the fishing season or annually, as the Secretary may prescribe. Such report shall be submitted in such form as the Secretary may require and shall include the following:

(1) the type of fishery engaged in by the owner's vessel;

(2) the date and approximate time of any incidental taking of a marine mammal, together with the area in which the incidental taking occurred, the fishing gear used at the time of the incidental taking, and the species of fish involved; and

(3) for each incidental taking, the number and species of marine mammals involved, whether the marine mammals were deterred from gear or catch, incidentally injured, incidentally killed, or lethally removed to protect gear, catch, or human life.

If there was no incidental taking of marine mammals during the reporting period, a report stating that fact shall be filed with the Secretary.

(d) [PROGRAM FOR ENHANCEMENT AND VERIFICATION OF INFORMATION RECEIVED FROM VESSEL OWNERS; CONFIDENTIALITY OF INFORMATION.] —

(1) The Secretary shall establish a program to enhance the quality of and verify information received from reports submitted by owners of vessels who have been granted an exemption under subsection (b) of this section. The program shall include, but not be limited to—

(A) education efforts regarding the information that must be submitted;

(B) interviews with fishermen; and

(C) other such information gathering and verification activities that will enable the Secretary to determine reliably the nature, type, and extent of the incidental taking of marine mammals that occurs in a fishery.

Except to the extent authorized by the provisions of subsection (e), the program shall not include placement of observers aboard exempted vessels.

(2) Information obtained under this subsection shall be subject to the confidentiality provisions of subsection (j).

(e) [OBSERVERS ON BOARD EXEMPTED VESSELS; CONFIDENTIALITY OF INFORMATION; AUTHORIZATION OF APPROPRIATIONS.] —

(1) For each fishery identified under subsection (b)(1)(A)(i) of this section, the Secretary shall, after consultation with the appropriate Regional Fishery Management Councils, other Federal and State agencies, and other interested parties, and subject to

paragraph (6), place observers on board exempted vessels so as to monitor not less than 20 percent nor more than 35 percent of the fishing operations by vessels in the fishery to obtain statistically reliable information on the species and number of marine mammals incidentally taken in the fishery. If the Secretary determines that fewer than 20 percent of the fishing operations by vessels in the fishery will be monitored during the course of the fishing season, the Secretary shall implement the alternative observation program described in subsection (f) to the extent necessary to supplement the observer program described in this subsection.

(2) When determining the distribution of observers among fisheries and between vessels in a particular fishery, the Secretary shall be guided by the following standards:

(A) the requirement to obtain the best scientific information available;

(B) the requirement that assignment of observers is fair and equitable among fisheries and among vessels in a fishery;

(C) consistent with paragraph (1), the requirement that no individual person or vessel, or group of persons or vessels, be subject to excessive or overly burdensome observer coverage; and

(D) where practicable, the need to minimize costs and avoid duplication.

(3) If the Secretary finds that, for reasons beyond his or her control, the Secretary cannot assign observers to all the fisheries identified under subsection (b)(1)(A)(i) of this section at the level of observer coverage set forth in paragraph (1), the Secretary shall allocate available observers among such fisheries, consistent with paragraph (2), according to the following priority:

(A) those fisheries that incidentally take marine mammals from any population stock designated as depleted;

(B) those fisheries that incidentally take marine mammals from population stocks that the Secretary believes are declining;

(C) those fisheries other than those described in subparagraphs (A) and (B) in which the greatest incidental take of marine mammals occur; and

(D) any other fishery identified under subsection (b)(1)(A)(i).

The Secretary may, with the consent of the vessel owner, station an observer on board a vessel engaged in a fishery not identified under subsection (b)(1)(A)(i).

(4) Information gathered by observers shall be subject to the provisions of subsection (j). Consistent with the requirements of paragraph (1), the Secretary shall, if requested by the Appropriate Regional Fishery Management Council, or in the case of a State fishery, the State, require observers to collect additional information, including but not limited to the quantities, species, and physical condition of target and non-target fishery resources and, if requested by the Secretary of the Interior, seabirds.

(5) Notwithstanding the provisions of paragraph (4), the Secretary may decline to require observers to collect information described in such paragraph, if the Secretary finds in writing, following public notice and opportunity for comment, that such information will not contribute to the protection of marine mammals or the understanding of the marine ecosystem, including fishery resources and seabirds.

(6) The Secretary shall not be required to place an observer on a vessel in a fishery if the Secretary finds that—

(A) in a situation where harvesting vessels are delivering fish to a processing vessel and the catch is not taken on board the harvesting vessel, statistically reliable

information can be obtained from an observer on board the processing vessel to which the fish are delivered;

(B) the facilities of a 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; or

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

(7)(A) An observer on a vessel (or the observer's personal representative) under the requirements of this section or section 104 that is ill, disabled, injured, or killed from service as an observer on that vessel may not bring a civil action under any law of the United States for that illness, disability, injury, or death against the vessel or vessel owner, except that a civil action may be brought against the vessel owner for the owner's willful misconduct.

(B) This paragraph does not apply if the observer is engaged by the owner, master, or individual in charge of a vessel to perform any duties in service to the vessel.

(8) There are authorized to be appropriated to the Department of Commerce for the purposes of carrying out this subsection not to exceed \$2,700,000 for fiscal year 1989 and not to exceed \$8,000,000 for each of the fiscal years 1990, 1991, 1992, and 1993.

(f) [ALTERNATIVE OBSERVATION PROGRAM.] —

(1) The Secretary shall establish an alternative observation program to provide statistically reliable information on the species and number of marine mammals incidentally taken in those fisheries identified pursuant to subsection (b)(1)(A)(i) of this section for which the required level of observer coverage has not been met or for any other fisheries about which such reliable information is not otherwise available. The alternative program shall include, but not be limited to, direct observation of fishing activities from vessels, airplanes, or points on shore.

(2) Individuals engaged in the alternative observation program shall collect scientific information on the fisheries subject to observation, consistent with the requirements of paragraph (1) and subsection (e) (4) and (5). All information collected shall be subject to the provisions of subsection (j).

(g) [REVIEW OF INFORMATION AND EVALUATION OF EFFECTS OF INCIDENTAL TAKING ON POPULATION STOCKS OF MARINE MAMMALS; PROMULGATION OF EMERGENCY REGULATIONS TO MITIGATE IMMEDIATE AND SEVERE IMPACTS; ACTION TO MITIGATE NON-IMMEDIATE IMPACTS.] —

(1) The Secretary shall review information regarding the incidental taking of marine mammals and evaluate the effects of such incidental taking on the affected population stocks of marine mammals.

(2) If the Secretary finds, based on the information received from the programs established under subsections (c), (d), (e), and (f), that the incidental taking of marine mammals in a fishery is having an immediate and significant adverse impact on a marine mammal population stock or, in the case of Steller sea lions and North Pacific fur seals, that more than 1,350 and 50, respectively, will be incidentally killed during a calendar year, the Secretary shall consult with appropriate Regional Fishery Management Councils and State fishery managers and prescribe emergency regulations to prevent to the maximum extent practicable any further taking. Any emergency regulations prescribed under this paragraph—

(A) shall, to the maximum extent practicable, avoid interfering with existing State or regional fishery management plans;

(B) shall be published in the Federal Register together with the reasons therefor;

(C) shall remain in effect for not more than one hundred and eighty days or until the end of the fishing season, whichever is earlier; and

(D) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination if the Secretary determines the reasons for the emergency regulations no longer exist.

In prescribing emergency regulations under this paragraph, the Secretary shall take into account the economics of the fishery concerned and the availability of existing technology to prevent or minimize incidental taking of marine mammals.

(3) If the Secretary finds, based on information received from the programs established under subsections (c), (d), (e), and (f), that incidental taking of marine mammals in a fishery is not having an immediate and significant adverse impact on a marine mammal population stock but that it will likely have a significant adverse impact over a period of time longer than one year, the Secretary shall request the appropriate Regional Fishery Management Council or State to initiate, recommend, or take such action within its authority as it considers necessary to mitigate the adverse impacts, including adjustments to requirements on fishing times or areas or the imposition of restrictions on the use of vessels or gear.

(4) The Secretary shall impose appropriate conditions and restrictions on an exemption granted under subsection (b) if—

(A) a Regional Fishery Management Council or State does not act in a reasonable period of time on a request made by the Secretary under paragraph (3); or

(B) if the Secretary determines after notice and opportunity for public comment that the purposes of this section would be better served by such action.

(h) [INFORMATION AND MANAGEMENT SYSTEM FOR PROCESSING AND ANALYZING REPORTS AND INFORMATION; ACCESSIBILITY TO PUBLIC.] — The Secretary shall design and implement an information management system capable of processing and analyzing reports received from the programs established under subsections (c), (d), (e), and (f), and other relevant sources, including Federal and State enforcement authorities, marine mammal stranding networks, and the marine mammal researchers. The information shall be made accessible to the public on a continuing basis, but in any case no later than six months after it is received, subject to the provisions of subsection (j).

(i) [UTILIZATION OF SERVICES OF STATE AND FEDERAL AGENCIES AND PRIVATE ENTITIES.] — When carrying out the Secretary's responsibilities under subsections (b), (d), (e), (f), and (h) of this section, the Secretary shall, to the maximum extent practicable, utilize the services and programs of State agencies, Federal agencies (including programs established by Regional Fishery Management Councils), marine fisheries commissions, universities, and private entities, on a reimbursable basis or otherwise. The Secretary is authorized to enter into contracts and agreements to carry out his or her responsibilities and shall establish appropriate guidelines to ensure that other programs used or contracted for will meet the same standards as a program established by the Secretary. A person contracting with the Secretary to provide observer services under subsection (e) of this section must provide evidence of financial responsibility in an amount and form prescribed by the Secretary to compensate employees (or their survivors) adequately for any illness, disability, injury, or death from service on a vessel.

(j) [CONFIDENTIALITY OF INFORMATION; EXCEPTIONS.] —

(1) Any information collected under subsection (c), (d), (e), (f), or (h) of this section shall be confidential and shall not be disclosed except—

(A) to Federal employees whose duties require access to such information;

(B) to State 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; or

(D) in the case of scientific information involving fisheries, to employees of Regional Fishery Management Councils who are responsible for fishery management plan development and monitoring.

(2) The Secretary shall prescribe such procedures as may be necessary to preserve such confidentiality, except that the Secretary shall release or make public any such information in aggregate, summary, or other form which does not directly or indirectly disclose the identity or business of any person.

(k) [REGULATIONS.] — The Secretary, in consultation with any other Federal agency to the extent that such agency may be affected, shall prescribe such regulations as necessary and appropriate to carry out the purposes of this section.

(l) [SUGGESTED REGIME GOVERNING INCIDENTAL TAKING OF MARINE MAMMALS FOLLOWING TERMINATION OF INTERIM EXEMPTIONS.] —

(1) The Chairman of the Marine Mammal Commission shall, after consultation with interested parties and not later than February 1, 1990, transmit to the Secretary and make available to the public recommended guidelines to govern the incidental taking of marine mammals in the course of commercial fishing operations, other than those subject to section 104(h)(2), after October 1, 1993. Such guidelines shall be developed by the Commission and its Committee of Scientific Advisers¹⁰ on Marine Mammals and shall—

(A) be designed to provide a scientific rationale and basis for determining how many marine mammals may be incidentally taken under a regime to be adopted to govern such taking after October 1, 1993;

(B) be based on sound principles of wildlife management, and be consistent with and in furtherance of the purposes and policies set forth in this Act; and

(C) to the maximum extent practicable, include as factors to be considered and utilized in determining permissible levels of such taking—

(i) the status and trends of the affected marine mammal population stocks;

(ii) the abundance and annual net recruitment of such stocks;

(iii) the level of confidence in the knowledge of the affected stocks; and

(iv) the extent to which incidental taking will likely cause or contribute to their decline or prevent their recovery to optimum sustainable population levels.

(2) The Secretary shall advise the Chairman of the Commission in writing if the Secretary determines that any additional information or explanation of the Chairman's recommendations is needed, and the Chairman shall respond in writing to any such request by the Secretary.

(3) On or before February 1, 1991, the Secretary, after consultation with the Marine Mammal Commission, Regional Fishery Management Councils, and other interested governmental and nongovernmental organizations, shall publish in the Federal Register, for public comment, the suggested regime that the Secretary considers should, if authorized by enactment of any additional legislation, govern incidental taking of marine mammals, other than those subject to section 104(h)(2), after October 1, 1993. The suggested regime shall include—

(A) the scientific guidelines to be used in determining permissible levels of incidental taking;

(B) a description of the arrangements for consultation and cooperation with other Federal agencies, the appropriate Regional Fishery Management Councils and States, the commercial fishing industry, and conservation organizations; and

(C) a summary of such regulations and legislation as would be necessary to implement the suggested regime.

(4) On or before January 1, 1992, the Secretary, after consultation with the Marine Mammal Commission, and consideration of public comment, shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives recommendations pertaining to the incidental taking of marine mammals, other than those subject to section 104(h)(2), after October 1, 1993. The recommendations shall include—

(A) the suggested regime developed under paragraph (3) of this subsection as modified after comment and consultations;

(B) a proposed schedule for implementing the suggested regime; and

(C) such recommendations for additional legislation as the Secretary considers necessary or desirable to implement the suggested regime.

(m) [CONSULTATION WITH SECRETARY OF THE INTERIOR.] — The Secretary shall consult with the Secretary of the Interior prior to taking actions or making determinations under this section that affect or relate to species or population stocks of marine mammals for which the Secretary of the Interior is responsible under this title.

(n) [OWNER OF FIXED COMMERCIAL FISHING GEAR DEEMED OWNER OF VESSEL ENGAGED IN FISHERY IN WHICH GEAR DEPLOYED.] — For the purposes of this section, the owner of fixed or other commercial fishing gear that is deployed with or without the use of a vessel shall be deemed to be an owner of a vessel engaged in the fishery in which that gear is deployed.

(o) [DEFINITIONS.] — As used in this section—

(1) the term "fishery" has the same meaning as it does in section 3(8) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802(8)).

(2) the term "Secretary" means the Secretary of Commerce.

(3) the term "vessel engaged in a fishery" means a fishing vessel as defined in section 2101(11a) of Title 46, United States Code, or a fish processing vessel as defined in section 2101(11b) of that title, which is engaged in fishery.¹¹

(4) the term "vessel of the United States" has the same meaning as it does in section 3(27) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802(27)).

Status Review; Conservation Plans

16 U.S.C. 1383b

Sec. 115. (a) [DETERMINATIONS BY RULE; NOTICE AND HEARING; FINDINGS; FINAL RULE ON STATUS OF SPECIES OR STOCK INVOLVED.] —

(1) In any action by the Secretary to determine if a species or stock should be designated as depleted, or should no longer be designated as depleted, regardless of whether such action is taken on the initiative of the Secretary or in response to a petition for a status review, the Secretary shall only make such a determination by issuance of a rule, after notice and opportunity for public comment and after a call for information in accordance with paragraph (2).

(2) The Secretary shall make any determination described in paragraph (1) solely on the basis of the best scientific information available. Prior to the issuance of a proposed rule concerning any such determination, the Secretary shall publish in the Federal Register a call to assist the Secretary in obtaining scientific information from individuals and organizations concerned with the conservation of marine mammals, from persons in industry which might be affected by the determination, and from academic institutions. In addition, the Secretary shall utilize, to the extent the Secretary determines to be feasible, informal working groups of interested parties and other methods to gather the necessary information.

(3)(A) If the Secretary receives a petition for a status review as described in paragraph (1), the Secretary shall publish a notice in the Federal Register that such a petition has been received and is available for public review.

(B) Within sixty days after receipt of the petition, the Secretary shall publish a finding in the Federal Register as to whether the petition presents substantial information indicating that the petitioned action may be warranted.

(C) If the Secretary makes a positive finding under subparagraph (B), the Secretary shall include in the Federal Register notice, a finding that—

(i) a review of the status of the species or stock will be commenced promptly;
or

(ii) a prompt review of the petition is precluded by other pending status determination petitions and that expeditious progress is being made to process pending status determination petitions under this title.

In no case after making a finding under this subparagraph shall the Secretary delay commencing a review of the status of a species or stock for more than one hundred and twenty days after receipt of the petition.

(D) No later than two hundred and ten days after the receipt of the petition, the Secretary shall publish in the Federal Register a proposed rule as to the status of the species or stock, along with the reasons underlying the proposed status determination. Persons shall have at least sixty days to submit comments on such a proposed rule.

(E) Not later than ninety days after the close of the comment period on a proposed rule issued under subparagraph (D), the Secretary shall issue a final rule on the status of the species or stock involved, along with the reasons for the status determination. If the Secretary finds with respect to such a proposed rule that there is substantial disagreement regarding the sufficiency or accuracy of the available information relevant to a status determination, the Secretary may delay the issuance of a final rule for a period of not more than six months for purposes of soliciting additional information.

(F) Notwithstanding subparagraphs (D) and (E) of this paragraph and section 553 of Title 5, United States Code, the Secretary may issue a final rule as to the status of a species or stock any time sixty or more days after a positive finding under subparagraph (B) if the Secretary determines there is substantial information available to warrant such final status determination and further delay would pose a significant risk to the well-being of any species or stock. Along with the final rule, the Secretary shall publish in the Federal Register detailed reasons for the expedited determination.

(b) [CONSERVATION PLANS; PREPARATION AND IMPLEMENTATION.] —

(1) The Secretary shall prepare conservation plans—

(A) by December 31, 1989, for North Pacific fur seals;

(B) by December 31, 1990, for Steller sea lions; and

(C) as soon as possible, for any species or stock designated as depleted under this title, except that a conservation plan need not be prepared if the Secretary determines that it will not promote the conservation of the species or stock.

(2) Each plan shall have the purpose of conserving and restoring the species or stock to its optimum sustainable population. The Secretary shall model such plans on recovery plans required under section 4(f) of the Endangered Species Act of 1973 (16 U.S.C. 1533(f)).

(3) The Secretary shall act expeditiously to implement each conservation plan prepared under paragraph (1). Each year, the Secretary shall specify in the annual report prepared under section 103(f) of this title what measures have been taken to prepare and implement such plans.

(4) If the Secretary determines that a take reduction plan is necessary to reduce the incidental taking of marine mammals in the course of commercial fishing operations from a strategic stock, or for species or stocks which interact with a commercial fishery for which the Secretary has made a determination under section 118(f)(1), any conservation plan prepared under this subsection for such species or stock shall incorporate the take reduction plan required under section 118 for such species or stock.

Authorization of Appropriations

16 U.S.C. 1384

Sec. 116. (a) DEPARTMENT OF COMMERCE. —

(1) There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out its functions and responsibilities under this title (other than sections 117 and 118) and title IV, \$12,138,000 for fiscal year 1994, \$12,623,000 for fiscal year 1995, \$13,128,000 for fiscal year 1996, \$13,653,000 for fiscal year 1997, \$14,200,000 for fiscal year 1998, and \$14,768,000 for fiscal year 1999.

(2) There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out sections 117 and 118, \$20,000,000 for each of the fiscal years 1994 through 1999.

(b) DEPARTMENT OF THE INTERIOR. — There are authorized to be appropriated to the Department of the Interior, for purposes of carrying out its functions and responsibilities under this title, \$8,000,000 for fiscal year 1994, \$8,600,000 for fiscal year 1995, \$9,000,000 for fiscal year 1996, \$9,400,000 for fiscal year 1997, \$9,900,000 for fiscal year 1998, and \$10,296,000 for fiscal year 1999.

Dolphin Protection¹²

16 U.S.C. 1385

Sec. 1385 (a) SHORT TITLE. — This section may be cited as the "Dolphin Protection Consumer Information Act".

(b) FINDINGS. — The Congress finds that—

(1) dolphins and other marine mammals are frequently killed in the course of tuna fishing operations in the eastern tropical Pacific Ocean and high seas driftnet fishing in other parts of the world;

(2) it is the policy of the United States to support a worldwide ban on high seas driftnet fishing, in part because of the harmful effects that such driftnets have on marine mammals, including dolphins; and

(3) consumers would like to know if the tuna they purchase is falsely labeled as to the effect of the harvesting of the tuna on dolphins.

(c) DEFINITIONS. — For the purposes of this section—

(1) the terms "driftnet" and "driftnet fishing" have the meanings given those terms in section 4003 of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 (16 U.S.C. 1822 note);

(2) the term "eastern tropical Pacific Ocean" means the area of the Pacific Ocean bounded by 40 degrees north latitude, 40 degrees south latitude, 160 degrees west longitude, and the western coastlines of North, Central, and South America;

(3) the term "label" means a display of written, printed, or graphic matter on or affixed to the immediate container of any article;

(4) the term "Secretary" means the Secretary of Commerce; and

(5) the term "tuna product" means a food item which contains tuna and which has been processed for retail sale, except perishable sandwiches, salads, or other products with a shelf life less than 3 days.

(d) LABELING STANDARD. —

(1) It is a violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) for any producer, importer, exporter, distributor, or seller of any tuna product that is exported from or offered for sale in the United States to include on the label of that product the term "dolphin safe" or any other term or symbol that falsely claims or suggests that the tuna contained in the product were harvested using a method of fishing that is not harmful to dolphins if the product contains tuna harvested--

(A) on the high seas by a vessel engaged in driftnet fishing;

(B) outside the eastern tropical Pacific Ocean by a vessel using purse seine nets--

(i) in a fishery in which the Secretary has determined that a regular and significant association occurs between dolphins and tuna (similar to the association between dolphins and tuna in the eastern tropical Pacific Ocean), unless such product is accompanied by a written statement, executed by the captain of the vessel and an observer participating in a national or international program acceptable to the Secretary, certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular voyage on which the tuna

were caught and no dolphins were killed or seriously injured in the sets in which the tuna were caught; or

(ii) in any other fishery (other than a fishery described in subparagraph (D)) unless the product is accompanied by a written statement executed by the captain of the vessel certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular voyage on which the tuna was harvested;

(C) in the eastern tropical Pacific Ocean by a vessel using a purse seine net unless the tuna meet the requirements for being considered dolphin safe under paragraph (2); or

(D) by a vessel in a fishery other than one described in subparagraph (A), (B), or (C) that is identified by the Secretary as having a regular and significant mortality or serious injury of dolphins, unless such product is accompanied by a written statement executed by the captain of the vessel and an observer participating in a national or international program acceptable to the Secretary that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught, provided that the Secretary determines that such an observer statement is necessary.

(2) For purposes of paragraph (1)(C), a tuna product that contains tuna harvested in the eastern tropical Pacific Ocean by a vessel using purse seine nets is dolphin safe if--

(A) the vessel is of a type and size that the Secretary has determined, consistent with the International Dolphin Conservation Program, is not capable of deploying its purse seine nets on or to encircle dolphins; or

(B)(i) the product is accompanied by a written statement executed by the captain providing the certification required under subsection (h);

(ii) the product is accompanied by a written statement executed by--

(I) the Secretary or the Secretary's designee;

(II) a representative of the Inter-American Tropical Tuna Commission; or

(III) an authorized representative of a participating nation whose national program meets the requirements of the International Dolphin Conservation Program,

which states that there was an observer approved by the International Dolphin Conservation Program on board the vessel during the entire trip and that such observer provided the certification required under subsection (h); and

(iii) the statements referred to in clauses (i) and (ii) are endorsed in writing by each exporter, importer, and processor of the product; and

(C) the written statements and endorsements referred to in subparagraph (B) comply with regulations promulgated by the Secretary which provide for the verification of tuna products as dolphin safe.

(3)(A) The Secretary of Commerce shall develop an official mark that may be used to label tuna products as dolphin safe in accordance with this Act.

(B) A tuna product that bears the dolphin safe mark developed under subparagraph (A) shall not bear any other label or mark that refers to dolphins, porpoises, or marine mammals.

(C) It is a violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to label a tuna product with any label or mark that refers to dolphins, porpoises, or marine mammals other than the mark developed under subparagraph (A) unless--

(i) no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught;

(ii) the label is supported by a tracking and verification program which is comparable in effectiveness to the program established under subsection (f); and

(iii) the label complies with all applicable labeling, marketing, and advertising laws and regulations of the Federal Trade Commission, including any guidelines for environmental labeling.

(D) If the Secretary determines that the use of a label referred to in subparagraph (C) is substantially undermining the conservation goals of the International Dolphin Conservation Program, the Secretary shall report that determination to the United States Senate Committee on Commerce, Science, and Transportation and the United States House of Representatives Committees on Resources and on Commerce, along with recommendations to correct such problems.

(E) It is a violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) willfully and knowingly to use a label referred to in subparagraph (C) in a campaign or effort to mislead or deceive consumers about the level of protection afforded dolphins under the International Dolphin Conservation Program.

(e) ENFORCEMENT. — Any person who knowingly and willfully makes a statement or endorsement described in subsection (d)(2)(B) that is false is liable for a civil penalty of not to exceed \$100,000 assessed in an action brought in any appropriate district court of the United States on behalf of the Secretary.

(f) REGULATIONS. — The Secretary, in consultation with the Secretary of the Treasury, shall issue regulations to implement this Act, including regulations to establish a domestic tracking and verification program that provides for the effective tracking of tuna labeled under subsection (d). In the development of these regulations, the Secretary shall establish appropriate procedures for ensuring the confidentiality of proprietary information the submission of which is voluntary or mandatory. The regulations shall address each of the following items:

(1) The use of weight calculation for purposes of tracking tuna caught, landed, processed, and exported.

(2) Additional measures to enhance current observer coverage, including the establishment of criteria for training, and for improving monitoring and reporting capabilities and procedures.

(3) The designation of well location, procedures for sealing holds, procedures for monitoring and certifying both above and below deck, or through equally effective methods, the tracking and verification of tuna labeled under subsection (d).

(4) The reporting, receipt, and database storage of radio and facsimile transmittals from fishing vessels containing information related to the tracking and verification of tuna, and the definition of set.

(5) The shore-based verification and tracking throughout the fishing, transshipment, and canning process by means of Inter-American Tropical Tuna Commission trip records or otherwise.

(6) The use of periodic audits and spot checks for caught, landed, and processed tuna products labeled in accordance with subsection (d).

(7) The provision of timely access to data required under this subsection by the Secretary from harvesting nations to undertake the actions required in paragraph (6) of this paragraph.

The Secretary may make such adjustments as may be appropriate to the regulations promulgated under this subsection to implement an international tracking and verification program that meets or exceeds the minimum requirements established by the Secretary under this subsection.

(g) SECRETARIAL FINDINGS.--(1) Between March 1, 1999, and March 31, 1999, the Secretary shall, on the basis of the research conducted before March 1, 1999, under section 304(a) of the Marine Mammal Protection Act of 1972, information obtained under the International Dolphin Conservation Program, and any other relevant information, make an initial finding regarding whether the intentional deployment on or encirclement of dolphins with purse seine nets is having a significant adverse impact on any depleted dolphin stock in the eastern tropical Pacific Ocean. The initial finding shall be published immediately in the Federal Register and shall become effective upon a subsequent date determined by the Secretary.

(2) Between July 1, 2001, and December 31, 2002, the Secretary shall, on the basis of the completed study conducted under section 304(a) of the Marine Mammal Protection Act of 1972, information obtained under the International Dolphin Conservation Program, and any other relevant information, make a finding regarding whether the intentional deployment on or encirclement of dolphins with purse seine nets is having a significant adverse impact on any depleted dolphin stock in the eastern tropical Pacific Ocean. The finding shall be published immediately in the Federal Register and shall become effective upon a subsequent date determined by the Secretary.

(h) CERTIFICATION BY CAPTAIN BY OBSERVER.--

(1) Unless otherwise required by paragraph (2), the certification by the captain under subsection (d)(2)(B)(i) and the certification provided by the observer as specified in subsection (d)(2)(B)(ii) shall be that no dolphins were killed or seriously injured during the sets in which the tuna were caught.

(2) The certification by the captain under subsection (d)(2)(B)(i) and the certification provided by the observer as specified under subsection (d)(2)(B)(ii) shall be that no tuna were caught on the trip in which such tuna were harvested using a purse seine net intentionally deployed on or to encircle dolphins, and that no dolphins were killed or seriously injured during the sets in which the tuna were caught, if the tuna were caught on a trip commencing--

(A) before the effective date of the initial finding by the Secretary under subsection (g)(1);

(B) after the effective date of such initial finding and before the effective date of the finding of the Secretary under subsection (g)(2), where the initial finding is that the intentional deployment on or encirclement of dolphins is having a significant adverse impact on any depleted dolphin stock; or

(C) after the effective date of the finding under subsection (g)(2), where such finding is that the intentional deployment of or encirclement of dolphins is having a significant adverse impact on any such depleted stock.

Stock Assessments

16 U.S.C. 1386

Sec. 117. (a) IN GENERAL. — Not later than August 1, 1994, the Secretary shall, in consultation with the appropriate regional scientific review group established under subsection (d), prepare a draft stock assessment for each marine mammal stock which occurs in waters under the jurisdiction of the United States. Each draft stock assessment, based on the best scientific information available, shall—

- (1) describe the geographic range of the affected stock, including any seasonal or temporal variation in such range;
- (2) provide for such stock the minimum population estimate, current and maximum net productivity rates, and current population trend, including a description of the information upon which these are based;
- (3) estimate the annual human-caused mortality and serious injury of the stock by source and, for a strategic stock, other factors that may be causing a decline or impeding recovery of the stock, including effects on marine mammal habitat and prey;
- (4) describe commercial fisheries that interact with the stock, including—
 - (A) the approximate number of vessels actively participating in each such fishery;
 - (B) the estimated level of incidental mortality and serious injury of the stock by each such fishery on an annual basis;
 - (C) seasonal or area differences in such incidental mortality or serious injury; and
 - (D) the rate, based on the appropriate standard unit of fishing effort, of such incidental mortality and serious injury, and an analysis stating whether such level is insignificant and is approaching a zero mortality and serious injury rate;
- (5) categorize the status of the stock as one that either—
 - (A) has a level of human-caused mortality and serious injury that is not likely to cause the stock to be reduced below its optimum sustainable population; or
 - (B) is a strategic stock, with a description of the reasons therefor; and
- (6) estimate the potential biological removal level for the stock, describing the information used to calculate it, including the recovery factor.

(b) PUBLIC COMMENT. —

(1) The Secretary shall publish in the Federal Register a notice of the availability of a draft stock assessment or any revision thereof and provide an opportunity for public review and comment during a period of 90 days. Such notice shall include a summary of the assessment and a list of the sources of information or published reports upon which the assessment is based.

(2) Subsequent to the notice of availability required under paragraph (1), if requested by a person to which section 101(b) applies, the Secretary shall conduct a proceeding on the record prior to publishing a final stock assessment or any revision thereof for any stock subject to taking under section 101(b).

(3) After consideration of the best scientific information available, the advice of the appropriate regional scientific review group established under subsection (d), and the

comments of the general public, the Secretary shall publish in the Federal Register a notice of availability and a summary of the final stock assessment or any revision thereof, not later than 90 days after—

(A) the close of the public comment period on a draft stock assessment or revision thereof; or

(B) final action on an agency proceeding pursuant to paragraph (2).

(c) REVIEW AND REVISION. —

(1) The Secretary shall review stock assessments in accordance with this subsection—

(A) at least annually for stocks which are specified as strategic stocks;

(B) at least annually for stocks for which significant new information is available; and

(C) at least once every 3 years for all other stocks.

(2) If the review under paragraph (1) indicates that the status of the stock has changed or can be more accurately determined, the Secretary shall revise the stock assessment in accordance with subsection (b).

(d) REGIONAL SCIENTIFIC REVIEW GROUPS. —

(1) Not later than 60 days after the date of enactment of this section [June 29, 1994], the Secretary of Commerce shall, in consultation with the Secretary of the Interior (with respect to marine mammals under that Secretary's jurisdiction), the Marine Mammal Commission, the Governors of affected adjacent coastal States, regional fishery and wildlife management authorities, Alaska Native organizations and Indian tribes, and environmental and fishery groups, establish three independent regional scientific review groups representing Alaska, the Pacific Coast (including Hawaii), and the Atlantic Coast (including the Gulf of Mexico), consisting of individuals with expertise in marine mammal biology and ecology, population dynamics and modeling, commercial fishing technology and practices, and stocks taken under section 101(b). The Secretary of Commerce shall, to the maximum extent practicable, attempt to achieve a balanced representation of viewpoints among the individuals on each regional scientific review group. The regional scientific review groups shall advise the Secretary on—

(A) population estimates and the population status and trends of such stocks;

(B) uncertainties and research needed regarding stock separation, abundance, or trends, and factors affecting the distribution, size, or productivity of the stock;

(C) uncertainties and research needed regarding the species, number, ages, gender, and reproductive status of marine mammals;

(D) research needed to identify modifications in fishing gear and practices likely to reduce the incidental mortality and serious injury of marine mammals in commercial fishing operations;

(E) the actual, expected, or potential impacts of habitat destruction, including marine pollution and natural environmental change, on specific marine mammal species or stocks, and for strategic stocks, appropriate conservation or management measures to alleviate any such impacts; and

(F) any other issue which the Secretary or the groups consider appropriate.

(2) The scientific review groups established under this subsection shall not be subject to the Federal Advisory Committee Act (5 App. U.S.C.).

(3) Members of the scientific review groups shall serve without compensation, but may be reimbursed by the Secretary, upon request, for reasonable travel costs and expenses incurred in performing their obligations.

(4) The Secretary may appoint or reappoint individuals to the regional scientific review groups under paragraph (1) as needed.

(e) EFFECT ON SECTION 101(b). — This section shall not affect or otherwise modify the provisions of section 101(b).

Taking of Marine Mammals Incidental to Commercial Fishing Operations

16 U.S.C. 1387

Sec. 118. (a) IN GENERAL. —

(1) Effective on the date of enactment of this section [April 30, 1994], and except as provided in section 114 and in paragraphs (2), (3), and (4) of this subsection, the provisions of this section shall govern the incidental taking of marine mammals in the course of commercial fishing operations by persons using vessels of the United States or vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1824(b)). In any event it shall be the immediate goal that the incidental mortality or serious injury of marine mammals occurring in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate within 7 years after the date of enactment of this section [April 30, 2001].

(2) In the case of the incidental taking of marine mammals from species or stocks designated under this Act as depleted on the basis of their listing as threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), both this section and section 101(a)(5)(E) of this Act shall apply.

(3) Sections 104(h) and title III, and not this section, shall govern the taking of marine mammals in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean.

(4) This section shall not govern the incidental taking of California sea otters and shall not be deemed to amend or repeal the Act of November 7, 1986 (Public Law 99-625; 100 Stat. 3500).

(5) Except as provided in section 101(c), the intentional lethal take of any marine mammal in the course of commercial fishing operations is prohibited.

(6) Sections 103 and 104 shall not apply to the incidental taking of marine mammals under the authority of this section.

(b) ZERO MORTALITY RATE GOAL. —

(1) Commercial fisheries shall reduce incidental mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate within 7 years after the date of enactment of this section [April 30, 2001].

(2) Fisheries which maintain insignificant serious injury and mortality levels approaching a zero rate shall not be required to further reduce their mortality and serious injury rates.

(3) Three years after such date of enactment [April 30, 1997], the Secretary shall review the progress of all commercial fisheries, by fishery, toward reducing incidental mortality and serious injury to insignificant levels approaching a zero rate. 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 setting forth the results of such review within 1 year after commencement of the review. The Secretary shall note any commercial fishery for which additional information is required to accurately assess the level of incidental mortality and serious injury of marine mammals in the fishery.

(4) If the Secretary determines after review under paragraph (3) that the rate of incidental mortality and serious injury of marine mammals in a commercial fishery is not consistent with paragraph (1), then the Secretary shall take appropriate action under subsection (f).

(c) REGISTRATION AND AUTHORIZATION. —

(1) The Secretary shall, within 90 days after the date of enactment of this section [July 29, 1994]—

(A) publish in the Federal Register for public comment, for a period of not less than 90 days, any necessary changes to the Secretary's list of commercial fisheries published under section 114(b)(1) and which is in existence on March 31, 1994 (along with an explanation of such changes and a statement describing the marine mammal stocks interacting with, and the approximate number of vessels or persons actively involved in, each such fishery), with respect to commercial fisheries that have—

- (i) frequent incidental mortality and serious injury of marine mammals;
- (ii) occasional incidental mortality and serious injury of marine mammals; or
- (iii) a remote likelihood of or no known incidental mortality or serious injury of marine mammals;

(B) after the close of the period for such public comment, publish in the Federal Register a revised list of commercial fisheries and an update of information required by subparagraph (A), together with a summary of the provisions of this section and information sufficient to advise vessel owners on how to obtain an authorization and otherwise comply with the requirements of this section; and

(C) at least once each year thereafter, and at such other times as the Secretary considers appropriate, reexamine, based on information gathered under this Act and other relevant sources and after notice and opportunity for public comment, the classification of commercial fisheries and other determinations required under subparagraph (A) and publish in the Federal Register any necessary changes.

(2)(A) An authorization shall be granted by the Secretary in accordance with this section for a vessel engaged in a commercial fishery listed under paragraph (1)(A) (i) or (ii), upon receipt by the Secretary of a completed registration form providing the name of the vessel owner and operator, the name and description of the vessel, the fisheries in which it will be engaged, the approximate time, duration, and location of such fishery operations, and the general type and nature of use of the fishing gear and techniques used.

Such information shall be in a readily usable format that can be efficiently entered into and utilized by an automated or computerized data processing system. A decal or other physical evidence that the authorization is current and valid shall be issued by the Secretary at the time an authorization is granted, and so long as the authorization remains current and valid, shall be reissued annually thereafter.

(B) No authorization may be granted under this section to the owner of a vessel unless such vessel—

(i) is a vessel of the United States; or

(ii) has a valid fishing permit issued by the Secretary in accordance with section 204(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1824(b)).

(C) Except as provided in subsection (a), an authorization granted under this section shall allow the incidental taking of all species and stocks of marine mammals to which this Act applies.

(3)(A) An owner of a vessel engaged in any fishery listed under paragraph (1)(A) (i) or (ii) shall, in order to engage in the lawful incidental taking of marine mammals in a commercial fishery—

(i) have registered as required under paragraph (2) with the Secretary in order to obtain for each such vessel owned and used in the fishery an authorization for the purpose of incidentally taking marine mammals in accordance with this section, except that owners of vessels holding valid certificates of exemption under section 114 are deemed to have registered for purposes of this subsection for the period during which such exemption is valid;

(ii) ensure that a decal or such other physical evidence of a current and valid authorization as the Secretary may require is displayed on or is in the possession of the master of each such vessel;

(iii) report as required by subsection (e); and

(iv) comply with any applicable take reduction plan and emergency regulations issued under this section.

(B) Any owner of a vessel receiving an authorization under this section for any fishery listed under paragraph (1)(A) (i) or (ii) shall, as a condition of that authorization, take on board an observer if requested to do so by the Secretary.

(C) An owner of a vessel engaged in a fishery listed under paragraph (1)(A) (i) or (ii) who—

(i) fails to obtain from the Secretary an authorization for such vessel under this section;

(ii) fails to maintain a current and valid authorization for such vessel; or

(iii) fails to ensure that a decal or other physical evidence of such authorization issued by the Secretary is displayed on or is in possession of the master of the vessel,

and the master of any such vessel engaged in such fishery, shall be deemed to have violated this title, and for violations of clauses (i) and (ii) shall be subject to the penalties of this title, and for violations of clause (iii) shall be subject to a fine of not more than \$100 for each offense.

(D) If the owner of a vessel has obtained and maintains a current and valid authorization from the Secretary under this section and meets the requirements set forth in this section, including compliance with any regulations to implement a take reduction plan under this section, the owner of such vessel, and the master and crew members of the vessel, shall not be subject to the penalties set forth in this title for the incidental taking of marine mammals while such vessel is engaged in a fishery to which the authorization applies.

(E) Each owner of a vessel engaged in any fishery not listed under paragraph (1)(A) (i) or (ii), and the master and crew members of such a vessel, shall not be subject to the penalties set forth in this title for the incidental taking of marine mammals if such owner reports to the Secretary, in the form and manner required under subsection (e), instances of incidental mortality or injury of marine mammals in the course of that fishery.

(4)(A) The Secretary shall suspend or revoke an authorization granted under this section and shall not issue a decal or other physical evidence of the authorization for any vessel until the owner of such vessel complies with the reporting requirements under subsection (e) and such requirements to take on board an observer under paragraph (3)(B) as are applicable to such vessel. Previous failure to comply with the requirements of section 114 shall not bar authorization under this section for an owner who complies with the requirements of this section.

(B) The Secretary may suspend or revoke an authorization granted under this subsection, and may not issue a decal or other physical evidence of the authorization for any vessel which fails to comply with a take reduction plan or emergency regulations issued under this section.

(C) The owner and master of a vessel which fails to comply with a take reduction plan shall be subject to the penalties of sections 105 and 107, and may be subject to section 106.

(5)(A) The Secretary shall develop, in consultation with the appropriate States, affected Regional Fishery Management Councils, and other interested persons, the means by which the granting and administration of authorizations under this section shall be integrated and coordinated, to the maximum extent practicable, with existing fishery licenses, registrations, and related programs.

(B) The Secretary shall utilize newspapers of general circulation, fishery trade associations, electronic media, and other means of advising commercial fishermen of the provisions of this section and the means by which they can comply with its requirements.

(C) The Secretary is authorized to charge a fee for the granting of an authorization under this section. The level of fees charged under this subparagraph shall not exceed the administrative costs incurred in granting an authorization. Fees collected under this subparagraph shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred in the granting and administration of authorizations under this section.

(d) MONITORING OF INCIDENTAL TAKES. —

(1) The Secretary shall establish a program to monitor incidental mortality and serious injury of marine mammals during the course of commercial fishing operations. The purposes of the monitoring program shall be to—

(A) obtain statistically reliable estimates of incidental mortality and serious injury;

(B) determine the reliability of reports of incidental mortality and serious injury under subsection (e); and

(C) identify changes in fishing methods or technology that may increase or decrease incidental mortality and serious injury.

(2) Pursuant to paragraph (1), the Secretary may place observers on board vessels as necessary, subject to the provisions of this section. Observers may, among other tasks—

(A) record incidental mortality and injury, or by catch of other nontarget species;

(B) record numbers of marine mammals sighted; and

(C) perform other scientific investigations.

(3) In determining the distribution of observers among commercial fisheries and vessels within a fishery, the Secretary shall be guided by the following standards:

(A) The requirement to obtain statistically reliable information.

(B) The requirement that assignment of observers is fair and equitable among fisheries and among vessels in a fishery.

(C) The requirement that no individual person or vessel, or group of persons or vessels, be subject to excessive or overly burdensome observer coverage.

(D) To the extent practicable, the need to minimize costs and avoid duplication.

(4) To the extent practicable, the Secretary shall allocate observers among commercial fisheries in accordance with the following priority:

(A) The highest priority for allocation shall be for commercial fisheries that have incidental mortality or serious injury of marine mammals from stocks listed as endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(B) The second highest priority for allocation shall be for commercial fisheries that have incidental mortality and serious injury of marine mammals from strategic stocks.

(C) The third highest priority for allocation shall be for commercial fisheries that have incidental mortality or serious injury of marine mammals from stocks for which the level of incidental mortality and serious injury is uncertain.

(5) The Secretary may establish an alternative observer program to provide statistically reliable information on the species and number of marine mammals incidentally taken in the course of commercial fishing operations. The alternative observer program may include direct observation of fishing activities from vessels, airplanes, or points on shore.

(6) The Secretary is not required to place an observer on a vessel in a fishery if the Secretary finds that—

(A) in a situation in which harvesting vessels are delivering fish to a processing vessel and the catch is not taken on board the harvesting vessel, statistically reliable information can be obtained from an observer on board the processing vessel to which the fish are delivered;

(B) the facilities on a vessel for 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; or

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

(7) The Secretary may, with the consent of the vessel owner, station an observer on board a vessel engaged in a fishery not listed under subsection (c)(1)(A) (i) or (ii).

(8) Any proprietary information collected under this subsection shall be confidential and shall not be disclosed except—

(A) to Federal employees whose duties require access to such information;

(B) to State or tribal 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; or

(D) in the case of scientific information involving fisheries, to employees of Regional Fishery Management Councils who are responsible for fishery management plan development and monitoring.

(9) The Secretary shall prescribe such procedures as may be necessary to preserve such confidentiality, except that the Secretary shall release or make public upon request any such information in aggregate, summary, or other form which does not directly or indirectly disclose the identity or business of any person.

(e) REPORTING REQUIREMENT. — The owner or operator of a commercial fishing vessel subject to this Act shall report all incidental mortality and injury of marine mammals in the course of commercial fishing operations to the Secretary by mail or other means acceptable to the Secretary within 48 hours after the end of each fishing trip on a standard postage-paid form to be developed by the Secretary under this section. Such form shall be capable of being readily entered into and usable by an automated or computerized data processing system and shall require the vessel owner or operator to provide the following:

(1) The vessel name, and Federal, State, or tribal registration numbers of the registered vessel.

(2) The name and address of the vessel owner or operator.

(3) The name and description of the fishery.

(4) The species of each marine mammal incidentally killed or injured, and the date, time, and approximate geographic location of such occurrence.

(f) TAKE REDUCTION PLANS. —

(1) The Secretary shall develop and implement a take reduction plan designed to assist in the recovery or prevent the depletion of each strategic stock which interacts with a commercial fishery listed under subsection (c)(1)(A) (i) or (ii), and may develop and implement such a plan for any other marine mammal stocks which interact with a commercial fishery listed under subsection (c)(1)(A)(i) which the Secretary determines, after notice and opportunity for public comment, has a high level of mortality and serious injury across a number of such marine mammal stocks.

(2) The immediate goal of a take reduction plan for a strategic stock shall be to reduce, within 6 months of its implementation, the incidental mortality or serious injury of marine mammals incidentally taken in the course of commercial fishing operations to levels less than the potential biological removal level established for that stock under section 117. The long-term goal of the plan shall be to reduce, within 5 years of its implementation, the incidental mortality or serious injury of marine mammals incidentally taken in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing State or regional fishery management plans.

(3) If there is insufficient funding available to develop and implement a take reduction plan for all such stocks that interact with commercial fisheries listed under subsection

(c)(1)(A) (i) or (ii), the Secretary shall give highest priority to the development and implementation of take reduction plans for species or stocks whose level of incidental mortality and serious injury exceeds the potential biological removal level, those that have a small population size, and those which are declining most rapidly.

(4) Each take reduction plan shall include—

(A) a review of the information in the final stock assessment published under section 117(b) and any substantial new information;

(B) an estimate of the total number and, if possible, age and gender, of animals from the stock that are being incidentally lethally taken or seriously injured each year during the course of commercial fishing operations, by fishery;

(C) recommended regulatory or voluntary measures for the reduction of incidental mortality and serious injury;

(D) recommended dates for achieving the specific objectives of the plan.

(5)(A) For any stock in which incidental mortality and serious injury from commercial fisheries exceeds the potential biological removal level established under section 117, the plan shall include measures the Secretary expects will reduce, within 6 months of the plan's implementation, such mortality and serious injury to a level below the potential biological removal level.

(B) For any stock in which human-caused mortality and serious injury exceeds the potential biological removal level, other than a stock to which subparagraph (A) applies, the plan shall include measures the Secretary expects will reduce, to the maximum extent practicable within 6 months of the plan's implementation, the incidental mortality and serious injury by such commercial fisheries from that stock. For purposes of this subparagraph, the term "maximum extent practicable" means to the lowest level that is feasible for such fisheries within the 6-month period.

(6)(A) At the earliest possible time (not later than 30 days) after the Secretary issues a final stock assessment under section 117(b) for a strategic stock, the Secretary shall, and for stocks that interact with a fishery listed under subsection (c)(1)(A)(i) for which the Secretary has made a determination under paragraph (1), the Secretary may—

(i) establish a take reduction team for such stock and appoint the members of such team in accordance with subparagraph (C); and

(ii) publish in the Federal Register a notice of the team's establishment, the names of the team's appointed members, the full geographic range of such stock, and a list of all commercial fisheries that cause incidental mortality and serious injury of marine mammals from such stock.

(B) The Secretary may request a take reduction team to address a stock that extends over one or more regions or fisheries, or multiple stocks within a region or fishery, if the Secretary determines that doing so would facilitate the development and implementation of plans required under this subsection.

(C) Members of take reduction teams shall have expertise regarding the conservation or biology of the marine mammal species which the take reduction plan will address, or the fishing practices which result in the incidental mortality and serious injury of such species. Members shall include representatives of Federal agencies, each coastal State which has fisheries which interact with the species or stock, appropriate Regional Fishery Management Councils, interstate fisheries commissions, academic and scientific organizations, environmental groups, all commercial and recreational fisheries groups and gear types which incidentally take the species or stock, Alaska Native organizations or Indian tribal organizations, and others as the Secretary deems appro-

priate. Take reduction teams shall, to the maximum extent practicable, consist of an equitable balance among representatives of resource user interests and nonuser interests.

(D) Take reduction teams shall not be subject to the Federal Advisory Committee Act (5 App. U.S.C.). Meetings of take reduction teams shall be open to the public, and prior notice of meetings shall be made public in a timely fashion.

(E) Members of take reduction teams shall serve without compensation, but may be reimbursed by the Secretary, upon request, for reasonable travel costs and expenses incurred in performing their duties as members of the team.

(7) Where the human-caused mortality and serious injury from a strategic stock is estimated to be equal to or greater than the potential biological removal level established under section 117 for such stock and such stock interacts with a fishery listed under subsection (c)(1)(A) (i) or (ii), the following procedures shall apply in the development of the take reduction plan for the stock:

(A)(i) Not later than 6 months after the date of establishment of a take reduction team for the stock, the team shall submit a draft take reduction plan for such stock to the Secretary, consistent with the other provisions of this section.

(ii) Such draft take reduction plan shall be developed by consensus. In the event consensus cannot be reached, the team shall advise the Secretary in writing on the range of possibilities considered by the team, and the views of both the majority and minority.

(B)(i) The Secretary shall take the draft take reduction plan into consideration and, not later than 60 days after the submission of the draft plan by the team, the Secretary shall publish in the Federal Register the plan proposed by the team, any changes proposed by the Secretary with an explanation of the reasons therefor, and proposed regulations to implement such plan, for public review and comment during a period of not to exceed 90 days.

(ii) In the event that the take reduction team does not submit a draft plan to the Secretary within 6 months, the Secretary shall, not later than 8 months after the establishment of the team, publish in the Federal Register a proposed take reduction plan and implementing regulations, for public review and comment during a period of not to exceed 90 days.

(C) Not later than 60 days after the close of the comment period required under subparagraph (B), the Secretary shall issue a final take reduction plan and implementing regulations, consistent with the other provisions of this section.

(D) The Secretary shall, during a period of 30 days after publication of a final take reduction plan, utilize newspapers of general circulation, fishery trade associations, electronic media, and other means of advising commercial fishermen of the requirements of the plan and how to comply with them.

(E) The Secretary and the take reduction team shall meet every 6 months, or at such other intervals as the Secretary determines are necessary, to monitor the implementation of the final take reduction plan until such time that the Secretary determines that the objectives of such plan have been met.

(F) The Secretary shall amend the take reduction plan and implementing regulations as necessary to meet the requirements of this section, in accordance with the procedures in this section for the issuance of such plans and regulations.

(8) Where the human-caused mortality and serious injury from a strategic stock is estimated to be less than the potential biological removal level established under section 117 for such stock and such stock interacts with a fishery listed under subsection (c)(1)(A) (i) or (ii), or for any marine mammal stocks which interact with a commercial fishery

listed under subsection (c)(1)(A)(i) for which the Secretary has made a determination under paragraph (1), the following procedures shall apply in the development of the take reduction plan for such stock:

(A)(i) Not later than 11 months after the date of establishment of a take reduction team for the stock, the team shall submit a draft take reduction plan for the stock to the Secretary, consistent with the other provisions of this section.

(ii) Such draft take reduction plan shall be developed by consensus. In the event consensus cannot be reached, the team shall advise the Secretary in writing on the range of possibilities considered by the team, and the views of both the majority and minority.

(B)(i) The Secretary shall take the draft take reduction plan into consideration and, not later than 60 days after the submission of the draft plan by the team, the Secretary shall publish in the Federal Register the plan proposed by the team, any changes proposed by the Secretary with an explanation of the reasons therefor, and proposed regulations to implement such plan, for public review and comment during a period of not to exceed 90 days.

(ii) In the event that the take reduction team does not submit a draft plan to the Secretary within 11 months, the Secretary shall, not later than 13 months after the establishment of the team, publish in the Federal Register a proposed take reduction plan and implementing regulations, for public review and comment during a period of not to exceed 90 days.

(C) Not later than 60 days after the close of the comment period required under subparagraph (B), the Secretary shall issue a final take reduction plan and implementing regulations, consistent with the other provisions of this section.

(D) The Secretary shall, during a period of 30 days after publication of a final take reduction plan, utilize newspapers of general circulation, fishery trade associations, electronic media, and other means of advising commercial fishermen of the requirements of the plan and how to comply with them.

(E) The Secretary and the take reduction team shall meet on an annual basis, or at such other intervals as the Secretary determines are necessary, to monitor the implementation of the final take reduction plan until such time that the Secretary determines that the objectives of such plan have been met.

(F) The Secretary shall amend the take reduction plan and implementing regulations as necessary to meet the requirements of this section, in accordance with the procedures in this section for the issuance of such plans and regulations.

(9) In implementing a take reduction plan developed pursuant to this subsection, the Secretary may, where necessary to implement a take reduction plan to protect or restore a marine mammal stock or species covered by such plan, promulgate regulations which include, but are not limited to, measures to—

(A) establish fishery-specific limits on incidental mortality and serious injury of marine mammals in commercial fisheries or restrict commercial fisheries by time or area;

(B) require the use of alternative commercial fishing gear or techniques and new technologies, encourage the development of such gear or technology, or convene expert skippers' panels;

(C) educate commercial fishermen, through workshops and other means, on the importance of reducing the incidental mortality and serious injury of marine mammals in affected commercial fisheries; and

(D) monitor, in accordance with subsection (d), the effectiveness of measures taken to reduce the level of incidental mortality and serious injury of marine mammals in the course of commercial fishing operations.

(10)(A) Notwithstanding paragraph (6), in the case of any stock to which paragraph (1) applies for which a final stock assessment has not been published under section 117(b)(3) by April 1, 1995, due to a proceeding under section 117(b)(2), or any Federal court review of such proceeding, the Secretary shall establish a take reduction team under paragraph (6) for such stock as if a final stock assessment had been published.

(B) The draft stock assessment published for such stock under section 117(b)(1) shall be deemed the final stock assessment for purposes of preparing and implementing a take reduction plan for such stock under this section.

(C) Upon publication of a final stock assessment for such stock under section 117(b)(3) the Secretary shall immediately reconvene the take reduction team for such stock for the purpose of amending the take reduction plan, and any regulations issued to implement such plan, if necessary, to reflect the final stock assessment or court action. Such amendments shall be made in accordance with paragraph (7)(F) or (8)(F), as appropriate.

(D) A draft stock assessment may only be used as the basis for a take reduction plan under this paragraph for a period of not to exceed two years, or until a final stock assessment is published, whichever is earlier. If, at the end of the two-year period, a final stock assessment has not been published, the Secretary shall categorize such stock under section 117(a)(5)(A) and shall revoke any regulations to implement a take reduction plan for such stock.

(E) Subparagraph (D) shall not apply for any period beyond two years during which a final stock assessment for such stock has not been published due to review of a proceeding on such stock assessment by a Federal court. Immediately upon final action by such court, the Secretary shall proceed under subparagraph (C).

(11) Take reduction plans developed under this section for a species or stock listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) shall be consistent with any recovery plan developed for such species or stock under section 4 of such Act.

(g) EMERGENCY REGULATIONS. —

(1) If the Secretary finds that the incidental mortality and serious injury of marine mammals from commercial fisheries is having, or is likely to have, an immediate and significant adverse impact on a stock or species, the Secretary shall take actions as follows:

(A) In the case of a stock or species for which a take reduction plan is in effect, the Secretary shall—

(i) prescribe emergency regulations that, consistent with such plan to the maximum extent practicable, reduce incidental mortality and serious injury in that fishery; and

(ii) approve and implement, on an expedited basis, any amendments to such plan that are recommended by the take reduction team to address such adverse impact.

(B) In the case of a stock or species for which a take reduction plan is being developed, the Secretary shall—

(i) prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery; and

(ii) approve and implement, on an expedited basis, such plan, which shall provide methods to address such adverse impact if still necessary.

(C) In the case of a stock or species for which a take reduction plan does not exist and is not being developed, or in the case of a commercial fishery listed under subsection (c)(1)(A)(iii) which the Secretary believes may be contributing to such adverse impact, the Secretary shall—

(i) prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery, to the extent necessary to mitigate such adverse impact;

(ii) immediately review the stock assessment for such stock or species and the classification of such commercial fishery under this section to determine if a take reduction team should be established; and

(iii) may, where necessary to address such adverse impact on a species or stock listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), place observers on vessels in a commercial fishery listed under subsection (c)(1)(A)(iii), if the Secretary has reason to believe such vessels may be causing the incidental mortality and serious injury to marine mammals from such stock.

(2) Prior to taking action under paragraph (1) (A), (B), or (C), the Secretary shall consult with the Marine Mammal Commission, all appropriate Regional Fishery Management Councils, State fishery managers, and the appropriate take reduction team (if established).

(3) Emergency regulations prescribed under this subsection—

(A) shall be published in the Federal Register, together with an explanation thereof;

(B) shall remain in effect for not more than 180 days or until the end of the applicable commercial fishing season, whichever is earlier; and

(C) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination, if the Secretary determines that the reasons for emergency regulations no longer exist.

(4) If the Secretary finds that incidental mortality and serious injury of marine mammals in a commercial fishery is continuing to have an immediate and significant adverse impact on a stock or species, the Secretary may extend the emergency regulations for an additional period of not more than 90 days or until reasons for the emergency no longer exist, whichever is earlier.

(h) **PENALTIES.** — Except as provided in subsection (c), any person who violates this section shall be subject to the provisions of sections 105 and 107, and may be subject to section 106 as the Secretary shall establish by regulations.

(i) **ASSISTANCE.** — The Secretary shall provide assistance to Regional Fishery Management Councils, States, interstate fishery commissions, and Indian tribal organizations in meeting the goal of reducing incidental mortality and serious injury to insignificant levels approaching a zero mortality and serious injury rate.

(j) **CONTRIBUTIONS.** — For purposes of carrying out this section, the Secretary may accept, solicit, receive, hold, administer, and use gifts, devises, and bequests.

(k) **CONSULTATION WITH SECRETARY OF THE INTERIOR.** — The Secretary shall consult with the Secretary of the Interior prior to taking actions or making determinations under

this section that affect or relate to species or population stocks of marine mammals for which the Secretary of the Interior is responsible under this title.

(l) DEFINITIONS. — As used in this section and section 101(a)(5)(E), each of the terms "fishery" and "vessel of the United States" has the same meaning it does in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802).

Marine Mammal Cooperative Agreements in Alaska

16 U.S.C. 1388

Sec. 119. (a) IN GENERAL. — The Secretary may enter into cooperative agreements with Alaska Native organizations to conserve marine mammals and provide co-management of subsistence use by Alaska Natives.

(b) GRANTS. — Agreements entered into under this section may include grants to Alaska Native organizations for, among other purposes—

(1) collecting and analyzing data on marine mammal populations;

(2) monitoring the harvest of marine mammals for subsistence use;

(3) participating in marine mammal research conducted by the Federal Government, States, academic institutions, and private organizations; and

(4) developing marine mammal co-management structures with Federal and State agencies.

(c) EFFECT OF JURISDICTION. — Nothing in this section is intended or shall be construed—

(1) as authorizing any expansion or change in the respective jurisdiction of Federal, State, or tribal governments over fish and wildlife resources; or

(2) as altering in any respect the existing political or legal status of Alaska Natives, or the governmental or jurisdictional status of Alaska Native communities or Alaska Native entities.

(d) AUTHORIZATION OF APPROPRIATIONS. — There are authorized to be appropriated for the purposes of carrying out this section—

(1) \$1,500,000 to the Secretary of Commerce for each of the fiscal years 1994, 1995, 1996, 1997, 1998, and 1999; and

(2) \$1,000,000 to the Secretary of the Interior for each of the fiscal years 1994, 1995, 1996, 1997, 1998, and 1999. The amounts authorized to be appropriated under this subsection are in addition to the amounts authorized to be appropriated under section 116.

Pacific Coast Task Force; Gulf of Maine

16 U.S.C. 1389

Sec. 120. (a) PINNIPED REMOVAL AUTHORITY. — Notwithstanding any other provision of this title, the Secretary may permit the intentional lethal taking of pinnipeds in accordance with this section.

(b) APPLICATION. —

(1) A State may apply to the Secretary to authorize the intentional lethal taking of individually identifiable pinnipeds which are having a significant negative impact on the decline or recovery of salmonid fishery stocks which—

(A) have been listed as threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) the Secretary finds are approaching threatened species or endangered species status (as those terms are defined in that Act); or

(C) migrate through the Ballard Locks at Seattle, Washington.

(2) Any such application shall include a means of identifying the individual pinniped or pinnipeds, and shall include a detailed description of the problem interaction and expected benefits of the taking.

(c) ACTIONS IN RESPONSE TO APPLICATION. —

(1) Within 15 days of receiving an application, the Secretary shall determine whether the application has produced sufficient evidence to warrant establishing a Pinniped-Fishery Interaction Task Force to address the situation described in the application. If the Secretary determines sufficient evidence has been provided, the Secretary shall establish a Pinniped-Fishery Interaction Task Force and publish a notice in the Federal Register requesting public comment on the application.

(2) A Pinniped-Fishery Interaction Task Force established under paragraph (1) shall consist of designated employees of the Department of Commerce, scientists who are knowledgeable about the pinniped interaction that the application addresses, representatives of affected conservation and fishing community organizations, Indian Treaty tribes, the States, and such other organizations as the Secretary deems appropriate.

(3) Within 60 days after establishment, and after reviewing public comments in response to the Federal Register notice under paragraph (1), the Pinniped-Fishery Interaction Task Force shall—

(A) recommend to the Secretary whether to approve or deny the proposed intentional lethal taking of the pinniped or pinnipeds, including along with the recommendation a description of the specific pinniped individual or individuals, the proposed location, time, and method of such taking, criteria for evaluating the success of the action, and the duration of the intentional lethal taking authority; and

(B) suggest nonlethal alternatives, if available and practicable, including a recommended course of action.

(4) Within 30 days after receipt of recommendations from the Pinniped-Fishery Interaction Task Force, the Secretary shall either approve or deny the application. If such application is approved, the Secretary shall immediately take steps to implement the intentional lethal taking, which shall be performed by Federal or State agencies, or qualified individuals under contract to such agencies.

(5) After implementation of an approved application, the Pinniped-Fishery Interaction Task Force shall evaluate the effectiveness of the permitted intentional lethal taking or alternative actions implemented. If implementation was ineffective in eliminating the problem interaction, the Task Force shall recommend additional actions. If the implementation was effective, the Task Force shall so advise the Secretary, and the Secretary shall disband the Task Force.

(d) CONSIDERATIONS. — In considering whether an application should be approved or denied, the Pinniped-Fishery Interaction Task Force and the Secretary shall consider—

(1) population trends, feeding habits, the location of the pinniped interaction, how and when the interaction occurs, and how many individual pinnipeds are involved;

(2) past efforts to nonlethally deter such pinnipeds, and whether the applicant has demonstrated that no feasible and prudent alternatives exist and that the applicant has taken all reasonable nonlethal steps without success;

(3) the extent to which such pinnipeds are causing undue injury or impact to, or imbalance with, other species in the ecosystem, including fish populations; and

(4) the extent to which such pinnipeds are exhibiting behavior that presents an ongoing threat to public safety.

(e) LIMITATION. — The Secretary shall not approve the intentional lethal taking of any pinniped from a species or stock that is—

(1) listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(2) depleted under this Act; or

(3) a strategic stock.

(f) CALIFORNIA SEA LIONS AND PACIFIC HARBOR SEALS; INVESTIGATION AND REPORT. —

(1) The Secretary shall engage in a scientific investigation to determine whether California sea lions and Pacific harbor seals—

(A) are having a significant negative impact on the recovery of salmonid fishery stocks which have been listed as endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), or which the Secretary finds are approaching such endangered species or threatened species status; or

(B) are having broader impacts on the coastal ecosystems of Washington, Oregon, and California.

The Secretary shall conclude this investigation and prepare a report on its results no later than October 1, 1995.

(2) Upon completion of the scientific investigation required under paragraph (1), the Secretary shall enter into discussions with the Pacific States Marine Fisheries Commission, on behalf of the States of Washington, Oregon, and California, for the purpose of addressing any issues or problems identified as a result of the scientific investigation, and to develop recommendations to address such issues or problems. Any recommendations resulting from such discussions shall be submitted, along with the 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.

(3) The Secretary shall make the report and the recommendations submitted under paragraph (2) available to the public for review and comment for a period of 90 days.

(4) There are authorized to be appropriated to the Secretary such sums as are necessary to carry out the provisions of this subsection.

(5) The amounts appropriated under section 308(c) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(c)) and allocated to the Pacific States Marine Fisheries Commission may be used by the Commission to participate in discussions with the Secretary under paragraph (2).

(g) REGIONWIDE PINNIPED-FISHERY INTERACTION STUDY. —

(1) The Secretary may conduct a study, of not less than three high predation areas in anadromous fish migration corridors within the Northwest Region of the National Marine Fisheries Service, on the interaction between fish and pinnipeds. In conducting the study, the Secretary shall consult with other State and Federal agencies with expertise in pinniped-fishery interaction. The study shall evaluate—

(A) fish behavior in the presence of predators generally;

(B) holding times and passage rates of anadromous fish stocks in areas where such fish are vulnerable to predation;

(C) whether additional facilities exist, or could be reasonably developed, that could improve escapement for anadromous fish; and

(D) other issues the Secretary considers relevant.

(2) Subject to the availability of appropriations, the Secretary may, not later than 18 months after the commencement of the study under this subsection, transmit a report on the results of the study to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives.

(3) The study conducted under this subsection may not be used by the Secretary as a reason for delaying or deferring a determination or consideration under subsection (c) or (d).

(h) GULF OF MAINE TASK FORCE. — The Secretary shall establish a Pinniped-Fishery Interaction Task Force to advise the Secretary on issues or problems regarding pinnipeds interacting in a dangerous or damaging manner with aquaculture resources in the Gulf of Maine. No later than 2 years from the date of enactment of this section [April 30, 1996], the Secretary shall after notice and opportunity for public comment submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing recommended available alternatives to mitigate such interactions.

(i) REQUIREMENTS APPLICABLE TO TASK FORCES. —

(1) Any task force established under this section—

(A) shall to the maximum extent practicable, consist of an equitable balance among representatives of resource user interests and nonuser interests; and

(B) shall not be subject to the Federal Advisory Committee Act (5 App. U.S.C.).

(2) Meetings of any task force established under this section shall be open to the public, and prior notice of those meetings shall be given to the public by the task force in a timely fashion.

(j) GULF OF MAINE HARBOR PORPOISE. —

(1) Nothing in section 117 shall prevent the Secretary from publishing a stock assessment for Gulf of Maine harbor porpoise in an expedited fashion.

(2) In developing and implementing a take reduction plan under section 118 for Gulf of Maine harbor porpoise, the Secretary shall consider all actions already taken to reduce incidental mortality and serious injury of such stock, and may, based on the recommendations of the take reduction team for such stock, modify the time period required for compliance with section 118(f)(5)(A), but in no case may such modification extend the date of compliance beyond April 1, 1997.

TITLE II—Marine Mammal Commission

Establishment of Commission

16 U.S.C. 1401

Sec. 201. (a) [DESIGNATION.] — There is hereby established the Marine Mammal Commission (hereafter referred to in this title as the "Commission").

(b) [MEMBERSHIP AND TERM OF OFFICE.] —

(1) Effective September 1, 1982, the Commission shall be composed of three members who shall be appointed by the President, by and with the advice and consent of the Senate. The President shall make his selection from a list of individuals knowledgeable in the fields of marine ecology and resource management, and who are not in a position to profit from the taking of marine mammals. Such list shall be submitted to him by the Chairman of the Council on Environmental Quality and unanimously agreed to by that Chairman, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation and the Chairman of the National Academy of Sciences. No member of the Commission may, during his period of service on the Commission, hold any other position as an officer or employee of the United States except as a retired officer or retired civilian employee of the United States.

(2) The term of office for each member shall be three years; except that of the members initially appointed to the Commission, the term of one member shall be for one year, the term of one member shall be for two years, and the term of one member shall be for three years. No member is eligible for reappointment; except that any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed (A) shall be appointed for the remainder of such term, and (B) is eligible for reappointment for one full term. A member may serve after the expiration of his term until his successor has taken office.

(c) [CHAIRMAN.] — The President shall designate a Chairman of the Commission (hereafter referred to in this title as the "Chairman") from among its members.

(d) [COMPENSATION; REIMBURSEMENT FOR TRAVEL EXPENSES.] — Members of the Commission shall each be compensated at a rate equal to the daily equivalent of the rate for GS-18 of the General Schedule under section 5332 of Title 5, United States Code, for each day such member is engaged in the actual performance of duties vested in the Commission. Each member shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5, United States Code, for persons in Government service employed intermittently.

(e) [EXECUTIVE DIRECTOR.] — The Commission shall have an Executive Director, who shall be appointed (without regard to the provisions of Title 5, United States Code, governing appointments in the competitive service) by the Chairman with the approval of the Commission and shall be paid at a rate not in excess of the rate for GS-18 of the General Schedule under section 5332 of Title 5, United States Code. The Executive Director shall have such duties as the Chairman may assign.

Duties of Commission

16 U.S.C. 1402

Sec. 202. (a) [REPORTS AND RECOMMENDATIONS.] — The Commission shall—

(1) undertake a review and study of the activities of the United States pursuant to existing laws and international conventions relating to marine mammals, including, but not limited to, the International Convention for the Regulation of Whaling, the Whaling Convention Act of 1949, the Interim Convention on the Conservation of North Pacific Fur Seals, and the Fur Seal Act of 1966;

(2) conduct a continuing review of the condition of the stocks of marine mammals, of methods for their protection and conservation, of humane means of taking marine mammals, of research programs conducted or proposed to be conducted under the authority of this Act, and of all applications for permits for scientific research, public display, or enhancing the survival or recovery of a species or stock;

(3) undertake or cause to be undertaken such other studies as it deems necessary or desirable in connection with its assigned duties as to the protection and conservation of marine mammals;

(4) recommend to the Secretary and to other Federal officials such steps as it deems necessary or desirable for the protection and conservation of marine mammals;

(5) recommend to the Secretary of State appropriate policies regarding existing international arrangements for the protection and conservation of marine mammals, and suggest appropriate international arrangements for the protection and conservation of marine mammals;

(6) recommend to the Secretary such revisions of the endangered species list and threatened species list published pursuant to section 4(c)(1) of the Endangered Species Act of 1973, as may be appropriate with regard to marine mammals; and

(7) recommend to the Secretary, other appropriate Federal officials, and Congress such additional measures as it deems necessary or desirable to further the policies of this Act, including provisions for the protection of the Indians, Eskimos, and Aleuts whose livelihood may be adversely affected by actions taken pursuant to this Act.

(b) [CONSULTATION WITH SECRETARY; REPORTS TO SECRETARY BEFORE PUBLICATION.] — The Commission shall consult with the Secretary at such intervals as it or he may deem desirable, and shall provide each annual report required under section 204, before submission to Congress, to the Secretary for comment.

(c) [AVAILABILITY OF REPORTS FOR PUBLIC INSPECTION.] — The reports and recommendations which the Commission makes shall be matters of public record and shall be available to the public at all reasonable times. All other activities of the Commission shall be matters of public record and available to the public in accordance with the provisions of section 552 of Title 5, United States Code.

(d) [RECOMMENDATIONS; EXPLANATION FOR NON-ADOPTION.] — Any recommendations made by the Commission to the Secretary and other Federal officials shall be responded to by those individuals within one hundred and twenty days after receipt thereof. Any recommendations which are not followed or adopted shall be referred to the Commission together with a detailed explanation of the reasons why those recommendations were not followed or adopted.

Committee of Scientific Advisors on Marine Mammals

16 U.S.C. 1403

Sec. 203. (a) [ESTABLISHMENT; MEMBERSHIP.] — The Commission shall establish, within ninety days after its establishment, a Committee of Scientific Advisors on Marine Mammals (hereafter referred to in this title as the "Committee"). Such Committee shall consist of nine scientists knowledgeable in marine ecology and marine mammal affairs appointed by the Chairman after consultation with the Chairman of the Council on Environmental Quality, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation, and the Chairman of the National Academy of Sciences.

(b) [COMPENSATION; REIMBURSEMENT FOR TRAVEL EXPENSES.] — Except for United States Government employees, members of the Committee shall each be compensated at a rate equal to the daily equivalent of the rate for GS-18 of the General Schedule under section 5332 of Title 5, United States Code, for each day such member is engaged in the actual performance of duties vested in the Committee. Each member shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5, United States Code, for persons in Government service employed intermittently.

(c) [CONSULTATION WITH COMMISSION ON STUDIES AND RECOMMENDATIONS; EXPLANATION FOR NON-ADOPTION.] — The Commission shall consult with the Committee on all studies and recommendations which it may propose to make or has made, on research programs conducted or proposed to be conducted under the authority of this Act, and on all applications for permits for scientific research. Any recommendations made by the Committee or any of its members which are not adopted by the Commission shall be transmitted by the Commission to the appropriate Federal agency and to the appropriate committees of Congress with a detailed explanation of the Commission's reasons for not accepting such recommendations.

Commission Reports

16 U.S.C. 1404

Sec. 204. The Commission shall transmit to Congress, by January 31 of each year, a report which shall include—

(1) a description of the activities and accomplishments of the Commission during the immediately preceding year; and

(2) all the findings and recommendations made by and to the Commission pursuant to section 202 of this Act together with the responses made to these recommendations.¹³

Coordination With Other Federal Agencies

16 U.S.C. 1405

Sec. 205. The Commission shall have access to all studies and data compiled by Federal agencies regarding marine mammals. With the consent of the appropriate Secretary or Agency head, the Commission may also utilize the facilities or services of any Federal agency and shall take every feasible step to avoid duplication of research and to carry out the purposes of this Act.

Administration of Commission

16 U.S.C. 1406

Sec. 206. The Commission, in carrying out its responsibilities under this title, may—

(1) employ and fix the compensation of such personnel;

(2) acquire, furnish, and equip such office space;

(3) enter into such contracts or agreements with, or provide such grants to, other organizations, both public and private;

(4) procure the services of such experts or consultants or an organization thereof as is authorized under section 3109 of Title 5, United States Code (but at rates for individuals not to exceed \$100 per diem); and

(5) incur such necessary expenses and exercise such other powers, as are consistent with and reasonably required to perform its functions under this title; except that no fewer than 11 employees must be employed under paragraph (1) at any time. Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel, and procurement) shall be provided the Commission by the General Services Administration, for which payment shall be made in advance, or by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman and the Administrator of General Services.

Authorization of Appropriations

16 U.S.C. 1407

Sec. 207. There are authorized to be appropriated to the Marine Mammal Commission, for purposes of carrying out this title, \$1,500,000 for fiscal year 1994, \$1,550,000 for fiscal year 1995, \$1,600,000 for fiscal year 1996, \$1,650,000 for fiscal year 1997, \$1,700,000 for fiscal year 1998, and \$1,750,000 for fiscal year 1999.

TITLE III—International Dolphin Conservation Program

Findings and Policy

16 U.S.C. 1411

Sec. 301. (a) FINDINGS. — The Congress finds the following:

(1) The yellowfin tuna fishery of the eastern tropical Pacific Ocean has resulted in the deaths of millions of dolphins.

(2) Significant awareness and increased concern for the health and safety of dolphin populations has encouraged a change in fishing methods worldwide.

(3) United States tuna fishing vessels have led the world in the development of fishing methods to reduce dolphin mortalities in the eastern tropical Pacific Ocean and United States tuna processing companies have voluntarily promoted the marketing of tuna that is dolphin safe.

(4) Nations harvesting yellowfin tuna in the eastern tropical Pacific Ocean have demonstrated their willingness to participate in appropriate multilateral agreements to reduce dolphin mortality progressively to a level approaching zero through the setting of annual limits, with the goal of eliminating dolphin mortality in that fishery. Recognition of the International Dolphin Conservation Program will assure that the existing trend of reduced dolphin mortality continues, that individual stocks of dolphins are adequately protected; and that the goal of eliminating all dolphin mortality continues to be a priority.

(b) POLICY. — It is the policy of the United States to—

(1) eliminate the marine mammal mortality resulting from the intentional encirclement of dolphins and other marine mammals in tuna purse seine fisheries;

(2) support the International Dolphin Conservation Program and efforts within the Program to reduce, with the goal of eliminating, the mortality referred to in paragraph (1);

(3) ensure that the market of the United States does not act as an incentive to the harvest of tuna caught with driftnets or caught by purse seine vessels in the eastern tropical Pacific Ocean not operating in compliance with the International Dolphin Conservation Program;

(4) secure appropriate multilateral agreements to ensure that United States tuna fishing vessels shall have continued access to productive tuna fishing grounds in the South Pacific Ocean and elsewhere; and

(5) encourage observer coverage on purse seine vessels fishing for tuna outside of the eastern tropical Pacific Ocean in a fishery in which the Secretary has determined that a regular and significant association occurs between marine mammals and tuna, and in which tuna is harvested through the use of purse seine nets deployed on or to encircle marine mammals.

International Dolphin Conservation Program

16 U.S.C. 1412

Sec. 302. The Secretary of State, in consultation with the Secretary, shall seek to secure a binding international agreement to establish an International Dolphin Conservation Program that requires—

(1) that the total annual dolphin mortality in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean shall not exceed 5,000 animals with a commitment and objective to progressively reduce dolphin mortality to a level approaching zero through the setting of annual limits;

(2) the establishment of a per-stock per-year dolphin mortality limit, to be in effect through calendar year 2000, at a level between 0.2 percent and 0.1 percent of the minimum population estimate, as calculated, revised, or approved by the Secretary;

(3) the establishment of a per-stock per-year dolphin mortality limit, beginning with the calendar year 2001, at a level less than or equal to 0.1 percent of the minimum population estimate as calculated, revised, or approved by the Secretary;

(4) that if a dolphin mortality limit is exceeded under--

(A) paragraph (1), all sets on dolphins shall cease for the applicable fishing year; and

(B) paragraph (2) or (3), all sets on the stocks covered under paragraph (2) or (3) and any mixed schools that contain any of those stocks shall cease for the applicable fishing year;

(5) a scientific review and assessment to be conducted in calendar year 1998 to--

(A) assess progress in meeting the objectives set for calendar year 2000 under paragraph (2); and

(B) as appropriate, consider recommendations for meeting these objectives;

(6) a scientific review and assessment to be conducted in calendar year 2000--

(A) to review the stocks covered under paragraph (3); and

(B) as appropriate to consider recommendations to further the objectives set under that paragraph;

(7) the establishment of a per vessel maximum annual dolphin mortality limit consistent with the established per-year mortality limits, as determined under paragraphs (1) through (3); and

(8) the provision of a system of incentives to vessel captains to continue to reduce dolphin mortality, with the goal of eliminating dolphin mortality.

Regulatory Authority of the Secretary

16 U.S.C. 1413

Sec. 303. (a) REGULATIONS.—

(1) The Secretary shall issue regulations, and revise those regulations as may be appropriate, to implement the International Dolphin Conservation Program.

(2)(A) The Secretary shall issue regulations to authorize and govern the taking of marine mammals in the eastern tropical Pacific Ocean, including any species of marine mammal designated as depleted under this Act but not listed as endangered or threatened under the Endangered Species Act (16 U.S.C. 1531 et seq.), by vessels of the United States participating in the International Dolphin Conservation Program.

(B) Regulations issued under this section shall include provisions--

(i) requiring observers on each vessel;

(ii) requiring use of the backdown procedure or other procedures equally or more effective in avoiding mortality of, or serious injury to, marine mammals in fishing operations;

(iii) prohibiting intentional sets on stocks and schools in accordance with the International Dolphin Conservation Program;

(iv) requiring the use of special equipment, including dolphin safety panels in nets, monitoring devices as identified by the International Dolphin Conservation Program to detect unsafe fishing conditions that may cause high incidental dolphin mortality before nets are deployed by a tuna vessel, operable rafts, speedboats with towing bridles, floodlights in operable condition, and diving masks and snorkels;

(v) ensuring that the backdown procedure during sets of purse seine net on marine mammals is completed and rolling of the net to sack up has begun no later than 30 minutes before sundown;

(vi) banning the use of explosive devices in all purse seine operations;

(vii) establishing per vessel maximum annual dolphin mortality limits, total dolphin mortality limits and per-stock per-year mortality limits in accordance with the International Dolphin Conservation Program;

(viii) preventing the making of intentional sets on dolphins after reaching either the vessel maximum annual dolphin mortality limits, total dolphin mortality limits, or per-stock per-year mortality limits;

(ix) preventing the fishing on dolphins by a vessel without an assigned vessel dolphin mortality limit;

(x) allowing for the authorization and conduct of experimental fishing operations, under such terms and conditions as the Secretary may prescribe, for the purpose of testing proposed improvements in fishing techniques and equipment that may reduce or eliminate dolphin mortality or serious injury do not require the encirclement of dolphins in the course of commercial yellowfin tuna fishing;

(xi) authorizing fishing within the area covered by the International Dolphin Conservation Program by vessels of the United States without the use of special equipment or nets if the vessel takes an observer and does not intentionally deploy nets on, or encircle, dolphins, under such terms and conditions as the Secretary may prescribe; and

(xii) containing such other restrictions and requirements as the Secretary determines are necessary to implement the International Dolphin Conservation Program with respect to vessels of the United States.

(C) ADJUSTMENTS TO REQUIREMENTS.--The Secretary may make such adjustments as may be appropriate to requirements of subparagraph (B) that pertain to fishing gear, vessel equipment, and fishing practices to the extent the adjustments are consistent with the International Dolphin Conservation Program.

(b) CONSULTATION.--In developing any regulation under this section, the Secretary shall consult with the Secretary of State, the Marine Mammal Commission, and the United States Commissioners to the Inter-American Tropical Tuna Commission appointed under section 3 of the Tuna Conventions Act of 1950 (16 U.S.C. 952).

(c) EMERGENCY REGULATIONS.--

(1) If the Secretary determine, on the basis of the best scientific information available (including research conducted under section 304 and information obtained under the International Dolphin Conservation Program) that the incidental mortality and serious injury of marine mammals authorized under this title is having, or is likely to have, a significant adverse impact on a marine mammal stock or species, the Secretary shall--

(A) notify the Inter-American Tropical Tuna Commission of his or her determination, along with recommendations to the Commission as to actions necessary to reduce incidental mortality and serious injury and mitigate such adverse impact; and

(B) prescribe emergency regulations to reduce incidental mortality and serious injury and mitigate such adverse impact.

(2) Before taking action under subparagraph (A) or (B) of paragraph (1), the Secretary shall consult with the Secretary of State, the Marine Mammal Commission, and the United States Commissioners to the Inter-American Tropical Tuna Commission.

(3) Emergency regulations prescribed under this subsection--

(A) shall be published in the Federal Register, together with an explanation thereof;

(B) shall remain in effect for the duration of the applicable fishing year; and

(C) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination if the Secretary determines that the reasons for the emergency no longer exist.

(4) If the Secretary finds that the incidental mortality and serious injury of marine mammals in the yellowfin tuna fishery in the eastern tropical Pacific Ocean is continuing to have a significant adverse impact on a stock or species, the Secretary may extend the emergency regulations for such additional periods as may be necessary.

(5) Within 120 days after the Secretary notifies the United States Commissioners to the Inter-American Tropical Tuna Commission of the Secretary's determination under paragraph (1)(A), the United States Commissioners shall call for a special meeting of the Commission to address the actions necessary to reduce incidental mortality and serious injury and mitigate the adverse impact which resulted in the determination. The Commissioners shall report the results of the special meeting in writing to the Secretary and to the Secretary of State. In their report, the Commissioners shall--

(A) include a description of the actions taken by the harvesting nations or under the International Dolphin Conservation Program to reduce the incidental mortality and serious injury and measures to mitigate the adverse impact on the marine mammal species or stock;

(B) indicate whether, in their judgment, the actions taken address the problem adequately; and

(C) if they indicate that the actions taken do not address the problem adequately, include recommendations of such additional action to be taken as may be necessary.

Research

16 U.S.C. 1414

Sec. 304. (a) REQUIRED RESEARCH.--

(1) **IN GENERAL.--**The Secretary shall, in consultation with the Marine Mammal Commission and the Inter-American Tropical Tuna Commission, conduct a study of the effect of intentional encirclement (including chase) on dolphins and dolphin stocks incidentally taken in the course of purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean. The study, which shall commence on October 1, 1997, shall consist of abundance surveys as described in paragraph (2) and stress studies as described in paragraph (3), and shall address the question of whether such encirclement is having a significant adverse impact on any depleted dolphin stock in the eastern tropical Pacific Ocean.

(2) **POPULATION ABUNDANCE SURVEYS.--**The abundance surveys under this subsection shall survey the abundance of such depleted stocks and shall be conducted during each of the calendar years 1998, 1999, and 2000.

(3) **STRESS STUDIES.--**The stress studies under this subsection shall include--

(A) a review of relevant stress-related research and a 3-year series of necropsy samples from dolphins obtained by commercial vessels;

(B) a 1-year review of relevant historical demographic and biological data related to dolphins and dolphin stocks referred to in paragraph (1); and

(C) an experiment involving the repeated chasing and capturing of dolphins by means of intentional encirclement.

(4) **REPORT.--**No later than 90 days after publishing the finding under subsection (g)(2) of the Dolphin Protection Consumer Information Act, the Secretary shall complete and submit a report containing the results of the research described in this subsection to the United States Senate Committee on Commerce, Science, and Transportation and the United States House of Representative Committees on Resources and on Commerce, and to the Inter-American Tropical Tuna Commission.

(b) OTHER RESEARCH.--

(1) **IN GENERAL.--**In addition to conducting the research described in subsection (a), the Secretary shall, in consultation with the Marine Mammal Commission and in cooperation with the nations participating in the International Dolphin Conservation Program and the Inter-American Tropical Tuna Commission, undertake or support appropriate scientific research to further the goals of the International Dolphin Conservation Program.

(2) **SPECIFIC AREAS OF RESEARCH.--**Research carried out under paragraph (1) may include--

(A) projects to devise cost-effective fishing methods and gear so as to reduce, with the goal of eliminating, the incidental mortality and serious injury of marine mammals in connection with commercial purse seine fishing in the eastern tropical Pacific Ocean;

(B) projects to develop cost-effective methods of fishing for mature yellowfin tuna without setting nets on dolphins or other marine mammals;

(C) projects to carry out stock assessments for those marine mammal species and marine mammal stocks taken in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean, including species or stocks not within waters under the jurisdiction of the United States; and

(D) projects to determine the extent to which the incidental take of nontarget species, including juvenile tuna, occurs in the course of purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, the geographic location of the incidental take, and the impact of that incidental take on tuna stocks and nontarget species.

(c) AUTHORIZATION OF APPROPRIATIONS.--

(1) There are authorized to be appropriated to the Secretary the following amounts, to be used by the Secretary to carry out the research described in subsection (a):

(A) \$4,000,000 for fiscal year 1998.

(B) \$3,000,000 for fiscal year 1999.

(C) \$4,000,000 for fiscal year 2000.

(D) \$1,000,000 for fiscal year 2001.

(2) In addition to the amount authorized to be appropriated under paragraph (1), there are authorized to be appropriated to the Secretary for carrying out this section \$3,000,000 for each of the fiscal years 1998, 1999, 2000, and 2001.

Reports by the Secretary

16 U.S.C. 1415

Sec. 305. Notwithstanding section 103(f), the Secretary shall submit annual reports to the Congress which include—

(1) results of research conducted pursuant to section 304;

(2) a description of the status and trends of stocks of tuna;

(3) a description of the efforts to assess, avoid, reduce, and minimize the bycatch of juvenile yellowfin tuna and bycatch of nontarget species;

(4) a description of the activities of the International Dolphin Conservation Program and of the efforts of the United States in support of the program's goals and objectives, including the protection of dolphin stocks in the eastern tropical Pacific Ocean, and an assessment of the effectiveness of the program;

(5) actions taken by the Secretary under section 101(a)(2)(B) and section 101(d);

(6) copies of any relevant resolutions and decisions of the Inter-American Tropical Tuna Commission, and any regulations promulgated by the Secretary under this title; and

(7) any other information deemed relevant by the Secretary.

Permits

16 U.S.C. 1416

Sec. 306. (a) In General.--

(1) Consistent with the regulations issued pursuant to section 303, the Secretary shall issue a permit to a vessel of the United States authorizing participation in the International Dolphin Conservation Program and may require a permit for the person actually in charge of and controlling the fishing operation of the vessel. The Secretary shall prescribe such procedures as are necessary to carry out this subsection, including requiring the submission of--

(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; and

(B) the tonnage, hold capacity, speed, processing equipment, and type and quantity of gear, including an inventory of special equipment required under section 303, with respect to each vessel.

(2) The Secretary is authorized to charge a fee for granting an authorization and issuing a permit under this section. The level of fees charged under this paragraph may not exceed the administrative cost incurred in granting an authorization and issuing a permit. Fees collected under this paragraph shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred in granting authorization and issuing permits under this section.

(3) After the effective date of the International Dolphin Conservation Program Act, no vessel of the United States shall operate in the yellowfin tuna fishery in the eastern tropical Pacific Ocean without a valid permit issued under this section.

(b) PERMIT SANCTIONS.--

(1) In any case in which--

(A) a vessel for which a permit has been issued under this section has been used in the commission of an act prohibited under section 307;

(B) the owner or operator of any such vessel or any other person who has applied for or been issued a permit under this section has acted in violation of section 307; or

(C) any civil penalty or criminal fine imposed on a vessel, owner or operator of a vessel, or other person who has applied for or been issued a permit under this section has not been paid or is overdue, the Secretary may--

(i) revoke any permit with respect to such vessel, 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 or restrictions on any permit issued to, or applied for by, any such vessel or person under this section.

(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 other such matters as justice requires.

(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 transfer.

(4) In the case of any permit that is suspended for the failure to pay 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 section 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 title or otherwise.

Prohibitions

16 U.S.C. 1417

Sec. 307. (a) IN GENERAL. — It is unlawful—

(1) for any person to sell, purchase, offer for sale, transport, or ship, in the United States, any tuna or tuna product unless the tuna or tuna product is either dolphin safe or has been harvested in compliance with the International Dolphin Conservation Program by a country that is a member of the Inter-American Tropical Tuna Commission or has initiated and within 6 months thereafter completed all steps required of applicant nations in accordance with Article V, paragraph 3 of the Convention establishing the Inter-American Tropical Tuna Commission, to become a member of that organization;

(2) except as provided for in subsection 101(d)¹⁴, for any person or vessel subject to the jurisdiction of the United States intentionally to set a purse seine net on or to encircle any marine mammal in the course of tuna fishing operations in the eastern tropical Pacific Ocean except in accordance with this title and regulations issued under pursuant to this title; and

(3) for any person to import any yellowfin tuna or yellowfin tuna product or any other fish or fish product in violation of a ban on importation imposed under section 101(a)(2);

(4) for any person to violate any regulation promulgated under this title;

(5) for any person to refuse to permit any duly authorized officer to board a vessel subject to that person's control for purposes of conducting any search or inspection in connection with the enforcement of this title; and

(6) for any person to assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in paragraph (5).

(b) PENALTIES. —

(1) CIVIL PENALTY. — A person that knowingly and willfully violates subsection (a) (1), (2), (3), (4), or (5) shall be subject to a civil penalty under section 105(a).

(2) CRIMINAL PENALTY. — A person that knowingly and willfully violates subsection (a)(5) or (a)(6) shall be subject to a criminal penalty under section 105(b).

(c) CIVIL FORFEITURES. — Any vessel (including its fishing gear, appurtenances, stores, and cargo) used, and any fish (or its fair market value) taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by this section shall be subject to forfeiture to the United States in the manner provided in section 310 of the Magnuson-Stevens Fishery Conservation and Management Act.

TITLE IV—Marine Mammal Health and Stranding Response

Establishment of Program

16 U.S.C. 1421

Sec. 401. (a) ESTABLISHMENT. — The Secretary shall, in consultation with the Secretary of the Interior, the Marine Mammal Commission, and individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, including stranding network participants, establish a program to be known as the "Marine Mammal Health and Stranding Response Program".

(b) PURPOSES. — The purposes of the Program shall be to—

(1) facilitate the collection and dissemination of reference data on the health of marine mammals and health trends of marine mammal populations in the wild;

(2) correlate the health of marine mammals and marine mammal populations, in the wild, with available data on physical, chemical, and biological environmental parameters; and

(3) coordinate effective responses to unusual mortality events by establishing a process in the Department of Commerce in accordance with section 404.

Determination; Data Collection and Dissemination

16 U.S.C. 1421a

Sec. 402. (a) DETERMINATION FOR RELEASE. — The Secretary shall, in consultation with the Secretary of the Interior, the Marine Mammal Commission, and individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, including stranding network participants, develop objective criteria, after an opportunity for public review and comment, to provide guidance for determining at what point a rehabilitated marine mammal is releasable to the wild.

(b) COLLECTION. — The Secretary shall, in consultation with the Secretary of the Interior, collect and update, periodically, existing information on—

(1) procedures and practices for—

(A) rescuing and rehabilitating stranded marine mammals, including criteria used by stranding network participants, on a species-by-species basis, for determining at what point a marine mammal undergoing rescue and rehabilitation is returnable to the wild; and

(B) collecting, preserving, labeling, and transporting marine mammal tissues for physical, chemical, and biological analyses;

(2) appropriate scientific literature on marine mammal health, disease, and rehabilitation;

(3) strandings, which the Secretary shall compile and analyze, by region, to monitor species, numbers, conditions, and causes of illnesses and deaths of stranded marine mammals; and

(4) other life history and reference level data, including marine mammal tissue analyses, that would allow comparison of the causes of illness and deaths in stranded marine mammals with physical, chemical, and biological environmental parameters.

(c) AVAILABILITY. — The Secretary shall make information collected under this section available to stranding network participants and other qualified scientists.

Stranding Response Agreements

16 U.S.C. 1421b

Sec. 403. (a) IN GENERAL. — The Secretary may enter into an agreement under section 112(c) with any person to take marine mammals under section 109(h)(1) in response to a stranding.

(b) REQUIRED PROVISION. — An agreement authorized by subsection (a) shall—

(1) specify each person who is authorized to perform activities under the agreement; and

(2) specify any terms and conditions under which a person so specified may delegate that authority to another person.

(c) REVIEW. — The Secretary shall periodically review agreements under section 112(c) that are entered into pursuant to this title, for performance adequacy and effectiveness.

Unusual Mortality Event Response

16 U.S.C. 1421c

Sec. 404. (a) RESPONSE. —

(1) WORKING GROUP. — (A) The Secretary, acting through the Office, shall establish, in consultation with the Secretary of the Interior, a marine mammal unusual mortality event working group, consisting of individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, marine conservation, and medical science, to provide guidance to the Secretary and the Secretary of the Interior for—

(i) determining whether an unusual mortality event is occurring;

(ii) determining, after an unusual mortality event has begun, if response actions with respect to that event are no longer necessary; and

(iii) developing the contingency plan in accordance with subsection (b), to assist the Secretary in responding to unusual mortality events.

(B) The Federal Advisory Committee Act (5 App. U.S.C.) shall not apply to the marine mammal unusual mortality event working group established under this paragraph.

(2) RESPONSE TIMING. — The Secretary, in consultation with the Secretary of the Interior, shall to the extent necessary and practicable—

(A) within 24 hours after receiving notification from a stranding network participant that an unusual mortality event might be occurring, contact as many members as is possible of the unusual mortality event working group for guidance; and

(B) within 48 hours after receiving such notification—

(i) make a determination as to whether an unusual mortality event is occurring;

(ii) inform the stranding network participant of that determination; and

(iii) if the Secretary has determined an unusual mortality event is occurring, designate an Onsite Coordinator for the event, in accordance with subsection (c).

(b) CONTINGENCY PLAN. —

(1) IN GENERAL. — The Secretary shall, in consultation with the Secretary of the Interior and the unusual mortality event working group, and after an opportunity for public review and comment, issue a detailed contingency plan for responding to any unusual mortality event.

(2) CONTENTS. — The contingency plan required under this subsection shall include—

(A) a list of persons, including stranding network participants, at a regional, State, and local level, who can assist the Secretary in implementing a coordinated and effective response to an unusual mortality event;

(B) the types of marine mammal tissues and analyses necessary to assist in diagnosing causes of unusual mortality events;

(C) training, mobilization, and utilization procedures for available personnel, facilities, and other resources necessary to conduct a rapid and effective response to unusual mortality events; and

(D) such requirements as are necessary to—

(i) minimize death of marine mammals in the wild and provide appropriate care of marine mammals during an unusual mortality event;

(ii) assist in identifying the cause or causes of an unusual mortality event;

(iii) determine the effects of an unusual mortality event on the size estimates of the affected populations of marine mammals; and

(iv) identify any roles played in an unusual mortality event by physical, chemical, and biological factors, including contaminants.

(c) ONSITE COORDINATORS. —

(1) DESIGNATION. — (A) The Secretary shall, in consultation with the Secretary of the Interior, designate one or more Onsite Coordinators for an unusual mortality event, who shall make immediate recommendations to the stranding network participants on how to proceed with response activities.

(B) An Onsite Coordinator so designated shall be one or more appropriate Regional Directors of the National Marine Fisheries Service or the United States Fish and Wildlife Service, or their designees.

(C) If, because of the wide geographic distribution, multiple species of marine mammals involved, or magnitude of an unusual mortality event, more than one Onsite Coordinator is designated, the Secretary shall, in consultation with the Secretary of the Interior, designate which of the Onsite Coordinators shall have primary responsibility with respect to the event.

(2) FUNCTIONS. — (A) An Onsite Coordinator designated under this subsection shall coordinate and direct the activities of all persons responding to an unusual mortality event in accordance with the contingency plan issued under subsection (b), except that—

(i) with respect to any matter that is not covered by the contingency plan, an Onsite Coordinator shall use his or her best professional judgment; and

(ii) the contingency plan may be temporarily modified by an Onsite Coordinator, consulting as expeditiously as possible with the Secretary, the Secretary of the Interior, and the unusual mortality event working group.

(B) An Onsite Coordinator may delegate to any qualified person authority to act as an Onsite Coordinator under this title.

Unusual Mortality Event Activity Funding

16 U.S.C. 1421d

Sec. 405. (a) ESTABLISHMENT OF FUND. — There is established in the Treasury an interest bearing fund to be known as the "Marine Mammal Unusual Mortality Event Fund", which shall consist of amounts deposited into the Fund under subsection (c).

(b) USES. —

(1) IN GENERAL. — Amounts in the Fund—

(A) shall be available only for use by the Secretary, in consultation with the Secretary of the Interior—

(i) to compensate persons for special costs incurred in acting in accordance with the contingency plan issued under section 404(b) or under the direction of an Onsite Coordinator for an unusual mortality event;

(ii) for reimbursing any stranding network participant for costs incurred in preparing and transporting tissues collected with respect to an unusual mortality event for the Tissue Bank; and

(iii) for care and maintenance of marine mammal seized under section 104(c)(2)(D); and

(B) shall remain available until expended.

(2) PENDING CLAIMS. — If sufficient amounts are not available in the Fund to satisfy any authorized pending claim, such claim shall remain pending until such time as sufficient amounts are available. All authorized pending claims shall be satisfied in the order received.

(c) DEPOSITS INTO THE FUND. — There shall be deposited into the Fund—

(1) amounts appropriated to the Fund;

(2) other amounts appropriated to the Secretary for use with respect to unusual mortality events; and

(3) amounts received by the United States in the form of gifts, devises, and bequests under subsection (d).

(d) ACCEPTANCE OF DONATIONS. — For purposes of carrying out this title and section 104(c)(2)(D), the Secretary may accept, solicit, and use the services of volunteers, and may accept, solicit, receive, hold, administer, and use gifts, devises, and bequests.

Liability

16 U.S.C. 1421e

Sec. 406. (a) IN GENERAL. — A person who is authorized to respond to a stranding pursuant to an agreement entered into under section 112(c) is deemed to be an employee of the government for purposes of chapter 171 of title 28, United States Code, with respect to actions of the person that are—

- (1) in accordance with the agreement; and
- (2) in the case of an unusual mortality event, in accordance with—
 - (A) the contingency plan issued under section 404(b);
 - (B) the instructions of an Onsite Coordinator designated under section 404(c); or
 - (C) the best professional judgment of an Onsite Coordinator, in the case of any matter that is not covered by the contingency plan.

(b) LIMITATION. — Subsection (a) does not apply to actions of a person described in that subsection that are grossly negligent or that constitute willful misconduct.

National Marine Mammal Tissue Bank and Tissue Analysis

16 U.S.C. 1421f

Sec. 407. (a) TISSUE BANK. —

(1) IN GENERAL. — The Secretary shall make provision for the storage, preparation, examination, and archiving of marine mammal tissues. Tissues archived pursuant to this subsection shall be known as the "National Marine Mammal Tissue Bank".

(2) GUIDANCE FOR MARINE MAMMAL TISSUE COLLECTION, PREPARATION, AND ARCHIVING. — The Secretary shall, in consultation with individuals with knowledge and expertise in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, issue guidance, after an opportunity for public review and comment, for marine mammal tissue collection, preparation, archiving, and quality control procedures, regarding—

- (A) appropriate and uniform methods and standards for those activities to provide confidence in marine mammal tissue samples used for research; and
- (B) documentation of procedures used for collecting, preparing, and archiving those samples.

(3) SOURCE OF TISSUE. — In addition to tissues taken during marine mammal unusual mortality events, the Tissue Bank shall incorporate tissue samples taken from other sources in the wild, including—

- (A) samples from marine mammals taken incidental to commercial fishing operations;

- (B) samples from marine mammals taken for subsistence purposes;
- (C) biopsy samples; and
- (D) any other samples properly collected.

(b) **Tissue Analysis.** — The Secretary shall, in consultation with the Marine Mammal Commission, the Secretary of the Interior, and individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, issue guidance, after an opportunity for public review and comment, for analyzing tissue samples (by use of the most effective and advanced diagnostic technologies and tools practicable) as a means to monitor and measure overall health trends in representative species or populations of marine mammals, including—

- (1) the levels of, and if possible, the effects of, potentially harmful contaminants; and
- (2) the frequency of, and if possible, the causes and effects of abnormal lesions or anomalies.

(c) **DATA BASE.** —

(1) **IN GENERAL.** — The Secretary shall maintain a central data base which provides an effective means for tracking and accessing data on marine mammals, including relevant data on marine mammal tissues collected for and maintained in the Tissue Bank.

(2) **CONTENTS.** — The data base established under this subsection shall include—

- (A) reference data on the health of marine mammals and populations of marine mammals; and
- (B) data on species of marine mammals that are subject to unusual mortality events.

(d) **ACCESS.** — The Secretary shall, in consultation with the Secretary of the Interior, establish criteria, after an opportunity for public review and comment, for access to—

- (1) marine mammal tissues in the Tissue Bank;
- (2) analyses conducted pursuant to subsection (b); and
- (3) marine mammal data in the data base maintained under subsection (c);

which provide for appropriate uses of the tissues, analyses, and data by qualified scientists, including stranding network participants.

John H. Prescott Marine Mammal Rescue Assistance Grant Program¹⁵

16 U.S.C. 1421f-1

Sec. 408. (a) IN GENERAL. —

(1) Subject to the availability of appropriations, the Secretary shall conduct a grant program to be known as the John H. Prescott Marine Mammal Rescue Assistance Grant Program, to provide grants to eligible stranding network participants for the recovery or treatment of marine mammals, the collection of data from living or dead stranded marine mammals for scientific research regarding marine mammal health, and facility operation costs that are directly related to those purposes.

(2)(A) The Secretary shall ensure that, to the greatest extent practicable, funds provided as grants under this subsection are distributed equitably among the stranding regions designated as of the date of the enactment of the Marine Mammal Rescue Assistance Act of 2000 [December 21, 2000], and in making such grants shall give preference to those facilities that have established records for rescuing or rehabilitating sick and stranded marine mammals in each of the respective regions, or subregions.

(B) In determining priorities among such regions, the Secretary may consider—

(i) any episodic stranding or any mortality event other than an event described in section 410(6), that occurred in any region in the preceding year;

(ii) data regarding average annual strandings and mortality events per region; and

(iii) the size of the marine mammal populations inhabiting a geographic area within such a region.

(b) APPLICATION. — To receive a grant under this section, a stranding network participant shall submit an application in such form and manner as the Secretary may prescribe.

(c) CONSULTATION. — The Secretary shall consult with the Marine Mammal Commission, a representative from each of the designated stranding regions, and other individuals who represent public and private organizations that are actively involved in rescue, rehabilitation, release, scientific research, marine conservation, and forensic science regarding stranded marine mammals, regarding the development of criteria for the implementation of the grant program and the awarding of grants under the program.

(d) LIMITATION. — The amount of a grant under this section shall not exceed \$100,000.

(e) MATCHING REQUIREMENT. —

(1) IN GENERAL. — The non-Federal share of the costs of an activity conducted with a grant under this section shall be 25 percent of such costs.

(2) IN-KIND CONTRIBUTIONS. — The Secretary may apply to the non-Federal share of an activity conducted with a grant under this section the amount of funds, and the fair market value of property and services, provided by non-Federal sources and used for the activity.

(f) ADMINISTRATIVE EXPENSES. — Of amounts available each fiscal year to carry out this section, the Secretary may expend not more than 6 percent or \$80,000, whichever is greater, to pay the administrative expenses necessary to carry out this section.

(g) DEFINITIONS. — In this section:

(1) DESIGNATED STRANDING REGION. — The term "designated stranding region" means a geographic region designated by the Secretary for purposes of administration of this title.

(2) SECRETARY. — The term "Secretary" has the meaning given that term in section 3(12)(A).

(h) AUTHORIZATION OF APPROPRIATIONS. — There are authorized to be appropriated to carry out this section \$5,000,000 for each of fiscal years 2001 through 2003, to remain available until expended, of which—

- (1) \$4,000,000 may be available to the Secretary of Commerce; and
- (2) \$1,000,000 may be available to the Secretary of the Interior.

Authorization of Appropriations

16 U.S.C. 1421g

Sec. 409. There is authorized to be appropriated—

(1) to the Secretary for carrying out this title (other than sections 405 and 407) \$250,000 for each of fiscal years 1993 and 1994;

(2) to the Secretary for carrying out section 407, \$250,000 for each of fiscal years 1993 and 1994; and

(3) to the Fund, \$500,000 for fiscal year 1993.

Definitions

16 U.S.C. 1421h

Sec. 410. In this title, the following definitions apply:

(1) The term "Fund" means the Marine Mammal Unusual Mortality Event Fund established by section 405(a).

(2) The term "Office" means the Office of Protected Resources, in the National Marine Fisheries Service.

(3) The term "stranding" means an event in the wild in which—

(A) a marine mammal is dead and is—

(i) on a beach or shore of the United States; or

(ii) in waters under the jurisdiction of the United States (including any navigable waters); or

(B) a marine mammal is alive and is—

(i) on a beach or shore of the United States and unable to return to the water;

(ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or

(iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance.

(4) The term "stranding network participant" means a person who is authorized by an agreement under section 112(c) to take marine mammals as described in section 109(h)(1) in response to a stranding.

(5) The term "Tissue Bank" means the National Marine Tissue Bank provided for under section 407(a).

(6) The term "unusual mortality event" means a stranding that—

(A) is unexpected;

(B) involves a significant die-off of any marine mammal population; and

(C) demands immediate response.

TITLE V—POLAR BEARS

DEFINITIONS

16 U.S.C. 1423

Sec. 501. In this title (1) AGREEMENT.--The term `Agreement' means the Agreement Between the Government of the United States of America and the Government of the Russian Federation on the Conservation and Management of the Alaska-Chukotka Polar Bear Population, signed at Washington, D.C., on October 16, 2000.

(2) ALASKA NANUUQ COMMISSION.--The term `Alaska Nanuuq Commission' means the Alaska Native entity, in existence on the date of enactment of the United States-Russia Polar Bear Conservation and Management Act of 2006, that represents all villages in the State of Alaska that engage in the annual subsistence taking of polar bears from the Alaska-Chukotka population and any successor entity.

(3) IMPORT.--The term `import' means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, without regard to whether the landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(4) POLAR BEAR PART OR PRODUCT .--The term part or product of a polar bear means any polar bear part or product, including the gall bile and gall bladder.

(5) SECRETARY --The term Secretary' means the Secretary of the Interior.

(6) TAKING --The term taking has the meaning given the term in the Agreement.

(7) COMMISSION --The term Commission means the

commission established under article 8 of the Agreement.

PROHIBITIONS

16 U.S.C. 1423a.

Sec. 502 (a) IN GENERAL --It is unlawful for any person who is subject to the jurisdiction of the United States or any person in waters or on lands under the jurisdiction of the United States--

(1) to take any polar bear in violation of the Agreement;

(2) to take any polar bear in violation of the Agreement or any annual taking limit or other restriction on the taking of polar bears that is adopted by the Commission pursuant to the Agreement;

(3) to import, export, possess, transport, sell, receive, acquire, or purchase, exchange, barter, or offer to sell, purchase, exchange, or barter any polar bear, or any part or product of a polar bear, that is taken in violation of paragraph (2);

(4) to import, export, sell, purchase, exchange, barter, or offer to sell, purchase, exchange, or barter, any polar bear gall bile or polar bear gall bladder;

(5) to attempt to commit, solicit another person to commit, or cause to be committed, any offense under this subsection; or

(6) to violate any regulation promulgated by the Secretary to implement any of the prohibitions established in this subsection.

(b) EXCEPTIONS --For the purpose of forensic testing or any other law enforcement purpose, the Secretary, and Federal law enforcement officials, and any State or local law enforcement official authorized by the Secretary, may import a polar bear or any part or product of a polar bear.

ADMINISTRATION

16 U.S.C. 1423b

Sec. 503. (a) IN GENERAL --The Secretary, acting through the Director of the United States Fish and Wildlife Service, shall do all things necessary and appropriate, including the promulgation of regulations, to implement, enforce, and administer the provisions of the Agreement on behalf of the United States. The Secretary shall consult with the Secretary of State and the Alaska Nanuq Commission on matters involving the implementation of the Agreement.

(b) UTILIZATION OF OTHER GOVERNMENT RESOURCES AND AUTHORITIES.--

(1) Other government resources.--The Secretary may utilize

by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency, any State agency, or the Alaska Nanuuq Commission for purposes of carrying out this title or the Agreement.

(2) Other powers and authorities.--Any person authorized by the Secretary under this subsection to enforce this title or the Agreement shall have the authorities that are enumerated in section 6(b) of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(b)).

(c) ENSURING COMPLIANCE –

(1) Title i authorities.--The Secretary may use authorities granted under title I for enforcement, imposition of penalties, and the seizure of cargo for violations under this title, provided that any polar bear or any part or product of a polar bear taken, imported, exported, possessed, transported, sold, received, acquired, purchased, exchanged, or bartered, or offered for sale, purchase, exchange, or barter in violation of this title, shall be subject to seizure and forfeiture to the United States without any showing that may be required for assessment of a civil penalty or for criminal prosecution under this Act.

(2) Additional authorities.--Any gun, trap, net, or other equipment used, and any vessel, aircraft, or other means of transportation used, to aid in the violation or attempted violation of this title shall be subject to seizure and forfeiture under section 106.

(d) REGULATIONS.--

(1) In general.--The Secretary shall promulgate such regulations as are necessary to carry out this title and the Agreement.

(2) ORDINANCES AND REGULATIONS.--If necessary to carry out this title and the Agreement, and to improve compliance with any annual taking limit or other restriction on taking adopted by the Commission and implemented by the Secretary in accordance with this title, the Secretary may promulgate regulations that adopt any ordinance or regulation that restricts the taking of polar bears for subsistence purposes if the ordinance or regulation has been promulgated by the Alaska Nanuuq Commission.

**COOPERATIVE MANAGEMENT AGREEMENT;
AUTHORITY TO DELEGATE ENFORCEMENT AUTHORITY.**

16 U.S.C. 1423c

Sec. 504. a) IN GENERAL --The Secretary, acting through the Director of the United States Fish and Wildlife Service, may share authority under this title for the management of the taking of polar bears for subsistence purposes with the Alaska Nanuuq Commission if such commission is eligible under subsection (b).

(b) DELEGATION --To be eligible for the management authority described in subsection (a), the Alaska Nanuuq Commission shall–

(1) enter into a cooperative agreement with the Secretary under section 119 for the conservation of polar bears;

(2) meaningfully monitor compliance with this title and the Agreement by Alaska Natives; and

(3) administer its co-management program for polar bears in accordance with—

- (A) this title; and
- (B) the Agreement.

COMMISSION APPOINTMENTS; COMPENSATION, TRAVEL EXPENSES, AND CLAIMS.

16 U.S.C. 1423d

Sec. 505 (a) APPOINTMENT OF UNITED STATES COMMISSIONERS

(1) < NOTE: President.> > Appointment.--The United States commissioners on the Commission shall be appointed by the President, in accordance with paragraph 2 of article 8 of the Agreement, after taking into consideration the recommendations of--

- (A) the Secretary;
- (B) the Secretary of State; and
- (C) the Alaska Nanuq Commission.

(2) QUALIFICATIONS --With respect to the United States Commissioners appointed under this subsection, in accordance with paragraph 2 of article 8 of the Agreement--

- (A) 1 United States commissioner shall be an official of the Federal Government;
- (B) < < NOTE: Native Alaskans.> > 1 United States commissioner shall be a representative of the Native people of Alaska, and, in particular, the Native people for whom polar bears are an integral part of their culture; and
- (C) both commissioners shall be knowledgeable of, or have expertise in, polar bears.

(3) SERVICE AND TERM.--Each United States commissioner shall serve--

- (A) at the pleasure of the President; and
- (B) for an initial 4-year term and such additional terms as the President shall determine.

(4) VACANCIES --

(A) IN GENERAL.--Any individual appointed to fill a vacancy occurring before the expiration of any term of office of a United States commissioner shall be appointed for the remainder of that term.

(B) MANNER.--Any vacancy on the Commission shall be filled in the same manner as the original appointment.

(b) ALTERNATE COMMISSIONERS.--

(1) IN GENERAL --The Secretary, in consultation with the Secretary of State and the Alaska Nanuuq Commission, shall designate an alternate commissioner for each member of the United States section.

(2) DUTIES --In the absence of a United States commissioner, an alternate commissioner may exercise all functions of the United States commissioner at any meetings of the Commission or of the United States section.

(3) REAPPOINTMENT --An alternate commissioner--

(A) < < NOTE: President.> > shall be eligible for reappointment by the President; and

(B) may attend all meetings of the United States section.

(c) DUTIES --The members of the United States section may carry out the functions and responsibilities described in article 8 of the Agreement in accordance with this title and the Agreement.

(d) COMPENSATION AND EXPENSES --

(1) COMPENSATION --A member of the United States section shall serve without compensation.

(2) TRAVEL EXPENSES --A member of the United States section shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the United States-Russia Polar Bear Commission.

(e) AGENCY DESIGNATION --The United States section shall, for the purpose of title 28, United States Code, relating to claims against the United States and tort claims procedure, be considered to be a Federal agency.

**VOTES TAKEN BY THE UNITED STATES
SECTION ON MATTERS BEFORE THE COMMISSION.**

16 U.S.C. 1423e

Sec. 506 In accordance with paragraph 3 of article 8 of the Agreement, the United States section, made up of commissioners appointed by the President, shall vote on any issue before the United States-Russia Polar Bear Commission only if there is no disagreement between the United States commissioners regarding the vote.

**IMPLEMENTATION OF ACTIONS TAKEN BY
THE COMMISSION.**

16 U.S.C. 1423f

Sec. 507 (a) IN GENERAL --The Secretary shall take all necessary actions to implement the decisions and determinations of the Commission under paragraph 7 of article 8 of the Agreement.

(b) < < NOTE: DEADLINE. NOTICE. FEDERAL REGISTER, PUBLICATION.> > Taking Limitation.--Not later than 60 days after the date on which the Secretary receives notice of the determination of the Commission of an annual taking limit, or of the adoption by the Commission of other restriction on the taking of polar bears for subsistence purposes, the Secretary shall publish a notice in the Federal Register announcing the determination or restriction.

APPLICATION WITH OTHER TITLES OF ACT

16 U.S.C. 1423g

Sec. 508 (a) IN GENERAL --The authority of the Secretary under this title is in addition to, and shall not affect--

- (1) the authority of the Secretary under other titles of this Act or the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.) or the exemption for Alaskan natives under section 101(b) of this Act as applied to other marine mammal populations; or
- (2) the authorities provided under title II of this Act.

(b) CERTAIN PROVISIONS INAPPLICABLE --The provisions of titles I through IV of this Act do not apply with respect to the implementation or administration of this title, except as specified in section 503.

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AUTHORIZATION OF APPROPRIATIONS.

16 U.S.C. 1423h

Sec. 509 (a) IN GENERAL.--There are authorized to be appropriated to the Secretary to carry out the functions and responsibilities of the Secretary under this title and the Agreement \$1,000,000 for each of fiscal years 2006 through 2010.

(b) COMMISSION.--There are authorized to be appropriated to the Secretary to carry out functions and responsibilities of the United States Section \$150,000 for each of fiscal years 2006 through 2010.

(c) ALASKAN COOPERATIVE MANAGEMENT PROGRAM.--There are authorized to be appropriated to the Secretary to carry out this title and the Agreement in Alaska \$150,000 for each of fiscal years 2006 through 2010..

Notes

Certain provisions of law, although not codified, are linked to statutes set forth in the United States Code. These provisions may be included in the codified version of the statute as notes. Oftentimes provisions with note status will have a limited period of effectiveness which does not warrant their codification. Selected notes associated with the Marine Mammal Protection Act are set forth below. For a complete listing of notes associated with the Act, the reader should consult the annotated version of the United States Code.

16 U.S.C. 1361 note

The following section 7 of Pub. L. 100-711, enacted November 23, 1988, has not been codified.

Study on Mortality of Atlantic Dolphin

Sec. 7. (a) The Secretary of Commerce shall conduct a study regarding the east coast epidemic during 1987 and 1988 which has caused substantial mortality within the North Atlantic coastal population of Atlantic bottle-nosed dolphin. The study shall examine—

- (1) the cause or causes of the epidemic;
 - (2) the effect of the epidemic on coastal and offshore populations of Atlantic bottle-nosed dolphin;
 - (3) the extent to which pollution may have contributed to the epidemic;
 - (4) whether other species and populations of marine mammals were affected by those factors which contributed to the epidemic; and
 - (5) any other matters pertaining to the causes and effects of the epidemic.
- (b) On or before January 1, 1989, 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 plan for conducting the study required in subsection (a).

16 U.S.C. 1361 note

The following section 306 of Pub. L. 102-567, enacted October 29, 1992, has not been codified.

Study on Effects of Dolphin Feeding

Sec. 306. (a) **STUDY.** — The Secretary of Commerce shall conduct a study in the eastern Gulf of Mexico on the effects of feeding of noncaptive dolphins by human beings. The study conducted pursuant to this section shall be designed to detect any behavior or diet modification resulting from this feeding and to identify the effects, if any, of these modifications on the health and well-being of the dolphins.

(b) **EXTERNAL REVIEW.** — In design and conduct of the study required under subsection (a), the Secretary shall consult with the National Academy of Sciences and the Marine Mammal Commission.

(c) **REPORT.** — Within 18 months after the date of the enactment of this Act [April 29, 1994], the Secretary shall submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the study conducted pursuant to subsection (a).

16 U.S.C. 1361 note

The following section 14 of Pub. L. 103-238, enacted April 30, 1994, has not been codified.

Indian Treaty Rights; Alaska Native Subsistence.

Sec. 14. Nothing in this Act [the Marine Mammal Protection Act Amendments of 1994], including any amendments to the Marine Mammal Protection Act of 1972 made by this Act—

(1) alters or is intended to alter any treaty between the United States and one or more Indian tribes; or

(2) affects or otherwise modifies the provisions of section 101(b) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(b)), except as specifically provided in the amendment made by section 4(b) of this Act [see section 101(b)].

16 U.S.C. 1361 note

The following section of Pub. L. 105-42, enacted August 15, 1997, has not been codified.

Sec. 2. (a) PURPOSES. — The purposes of this Act are—

(1) to give effect to the Declaration of Panama, signed October 4, 1995, by the Governments of Belize, Colombia, Costa Rica, Ecuador, France, Honduras, Mexico, Panama, Spain, the United States of America, Vanuatu, and Venezuela, including the establishment of the International Dolphin Conservation Program, relating to the protection of dolphins and other species, and the conservation and management of tuna in the eastern tropical Pacific Ocean;

(2) to recognize that nations fishing for tuna in the eastern tropical Pacific Ocean have achieved significant reductions in dolphin mortality associated with that fishery; and

(3) to eliminate the ban on imports of tuna from those nations that are in compliance with the International Dolphin Conservation Program.

(b) FINDINGS. — The Congress finds that—

(1) the nations that fish for tuna in the eastern tropical Pacific Ocean have achieved significant reductions in dolphin mortality associated with the purse seine fishery from hundreds of thousands annually to fewer than 5,000 annually;

(2) the provisions of the Marine Mammal Protection Act of 1972 that impose a ban on imports from nations that fish for tuna in the eastern tropical Pacific Ocean have served as an incentive to reduce dolphin mortalities;

(3) tuna canners and processors of the United States have led the canning and processing industry in promoting a dolphin-safe tuna market; and

(4) 12 signatory nations to the Declaration of Panama, including the United States, agreed under that Declaration to require that the total annual dolphin mortality in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean not exceed 5,000 animals, with the objective of progressively reducing dolphin mortality to a level approaching zero through the setting of annual limits and with the goal of eliminating dolphin mortality.

16 U.S.C. 1373 note

The following section 1101 of Pub. L. 101-627, enacted November 28, 1990, has not been codified.

Report on Marine Mammal Populations

Sec. 1101. The Secretary of Commerce, in consultation with the Secretary of the Interior, shall provide to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives within 12 months after the date of enactment of this Act [November 28, 1991] a report—

(1) assessing population sizes and trends of harbor seals, sea otters, California sea lions, and northern sea lions off the coast of the State of Washington, which assessment shall include the historic, present, and projected population sizes and the overall health of current populations of such marine mammals;

(2) assessing the effectiveness of sections 101(a)(3)(A) and 109(h) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(3)(A) and 1379(h)) with particular emphasis on the management of the lower Columbia River and Puget Sound marine mammal populations, which assessment shall describe how the agencies are interpreting and implementing such sections, how often such sections have been invoked, and whether such sections have been effective in the management of marine mammal populations and in responding to the problems which such sections were intended to address; and

(3) specifying long range management plans for the species of marine mammals listed in paragraph (1).

16 U.S.C. 1374 note

The following section 5(c) of Pub. L. 103-238, enacted April 30, 1994, has not been codified.

Permits

Sec. 5. (c) EXISTING PERMITS. — Any permit issued under section 104(c)(2) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1374(c)(2)) before the date of the enactment of this Act [April 30, 1994] is hereby modified to be consistent with that section as amended by this Act.

16 U.S.C. 1379 note

The following section 4(b) of Pub. L. 97-58, enacted October 9, 1981, does not amend the Act, but should be linked with it.

State Management

Sec. 4. (b) NO EFFECT ON CERTAIN COOPERATIVE AGREEMENTS. — Nothing in the amendments made by subsection (a) shall be construed as affecting in any manner, or to any extent, any cooperative agreement entered into by a State under section 6(c) of the Endangered Species Act of 1973 (16 U.S.C. 1535(c)) before, on, or after the date of the enactment of this Act [October 9, 1981].

16 U.S.C. 1421 note

The following section 3002 of Pub. L. 102-587, enacted November 4, 1992, has not been codified.

Findings

Sec. 3002. The Congress finds the following:

(1) Current stranding network participants have performed an undeniably valuable and ceaseless job of responding to marine mammal strandings over the last 15 years.

(2) Insufficient understanding of the connection between marine mammal health and the physical, chemical, and biological parameters of their environment prevents an adequate understanding of the causes of marine mammal unusual mortality events.

(3) An accurate assessment of marine mammal health, health trends in marine mammal populations in the wild, and causes of marine mammal unusual mortality events cannot be made without adequate reference data on marine mammals and the environment in which they live.

(4) A systematic assessment of the sources, presence, levels, and effects of potentially harmful contaminants on marine mammals would provide a better understanding of some of the causes of marine mammal unusual mortality events and may serve as an indicator of the general health of our coastal and marine environments.

(5) Responses to marine mammal unusual mortality events are often uncoordinated, due to the lack of sufficient contingency planning.

(6) Standardized methods for the reporting of dying, dead, or otherwise incapacitated marine mammals in the wild would greatly assist in the determination of the causes of marine mammal unusual mortality events and enhance general knowledge of marine mammal species.

(7) A formal system for collection, preparation, and archiving of, and providing access to, marine mammal tissues will enhance efforts to investigate the health of marine mammals and health trends of marine mammal populations, and to develop reference data.

(8) Information on marine mammals, including results of analyses of marine mammal tissues, should be broadly available to the scientific community, including stranding network participants, through a marine mammal data base.

16 U.S.C. 1421a note

The following section 3003(b), of Pub. L. 102-587, enacted November 4, 1992, has not been codified.

Marine Mammal Health and Stranding Response Program

Sec. 3003. (b) IMPLEMENTATION. — The Secretary of Commerce shall—

(1) in accordance with section 302 (a) and (b) of the Marine Mammal Protection Act of 1972, as amended by this Act, and not later than 24 months after the date of enactment of this Act [November 4, 1994]—

(A) develop and implement objective criteria to determine at what point a marine mammal undergoing rehabilitation is returnable to the wild; and

(B) collect and make available information on marine mammal health and health trends; and

(2) in accordance with section 304(b) of the Marine Mammal Protection Act of 1972, as amended by this Act, issue a detailed contingency plan for responding to any unusual mortality event—

(A) in proposed form by not later than 18 months after the date of enactment of this Act [June 4, 1994]; and

(B) in final form by not later than 24 months after the date of enactment of this Act [November 4, 1994].

RECENTLY ENACTED STATUTORY PROVISIONS RELATED TO MARINE MAMMALS

National Whale Conservation Fund Act

16 U.S.C. 3703

The following provision was enacted October 21, 1998, as Title IX, section 902, of Pub. L. 105-277.

Sec. 901. SHORT TITLE. — This title may be cited as the "National Whale Conservation Fund Act of 1998".

Sec. 902. FINDINGS. — Congress finds that—

(1) the populations of whales that occur in waters of the United States are resources of substantial ecological, scientific, socioeconomic, and esthetic value;

(2) whale populations—

(A) form a significant component of marine ecosystems;

(B) are the subject of intense research;

(C) provide for a multimillion dollar whale watching tourist industry that provides the public an opportunity to enjoy and learn about great whales and the ecosystems of which the whales are a part; and

(D) are of importance to Native Americans for cultural and subsistence purposes;

(3) whale populations are in various stages of recovery, and some whale populations, such as the northern right whale (*Eubaleana glacialis*) remain perilously close to extinction;

(4) the interactions that occur between ship traffic, commercial fishing, whale watching vessels, and other recreational vessels and whale populations may affect whale populations adversely;

(5) the exploration and development of oil, gas, and hard mineral resources, marine debris, chemical pollutants, noise, and other anthropogenic sources of change in the habitat of whales may affect whale populations adversely;

(6) the conservation of whale populations is subject to difficult challenges related to—

(A) the migration of whale populations across international boundaries;

(B) the size of individual whales, as that size precludes certain conservation research procedures that may be used for other animal species, such as captive research and breeding;

(C) the low reproductive rates of whales that require long-term conservation programs to ensure recovery of whale populations; and

(D) the occurrence of whale populations in offshore waters where undertaking research, monitoring, and conservation measures is difficult and costly;

(7) (A) the Secretary of Commerce, through the Administrator of the National Oceanic and Atmospheric Administration, has research and regulatory responsibility for the conser-

vation of whales under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.); and

(B) the heads of other Federal agencies and the Marine Mammal Commission established under section 201 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1401) have related research and management activities under the Marine Mammal Protection Act of 1972 or the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(8) the funding available for the activities described in paragraph (8)¹⁶ is insufficient to support all necessary whale conservation and recovery activities; and

(9) there is a need to facilitate the use of funds from non-Federal sources to carry out the conservation of whales.

Sec. 903. NATIONAL WHALE CONSERVATION FUND. — Section 4 of the National Fish and Wildlife Establishment Act (16 U.S.C. 3703) is amended by adding at the end the following:

"(f)(1) In carrying out the purposes under section 2(b), the Foundation may establish a national whale conservation endowment fund, to be used by the Foundation to support research, management activities, or educational programs that contribute to the protection, conservation, or recovery of whale populations in waters of the United States.

"(2)(A) In a manner consistent with subsection (c)(1), the Foundation may—

"(i) accept, receive, solicit, hold, administer, and use any gift, devise, or bequest made to the Foundation for the express purpose of supporting whale conservation; and

"(ii) deposit in the endowment fund under paragraph (1) any funds made available to the Foundation under this subparagraph, including any income or interest earned from a gift, devise, or bequest received by the Foundation under this subparagraph.

"(B) To raise funds to be deposited in the endowment fund under paragraph (1), the Foundation may enter into appropriate arrangements to provide for the design, copyright, production, marketing, or licensing, of logos, seals, decals, stamps, or any other item that the Foundation determines to be appropriate.

"(C)(i) The Secretary of Commerce may transfer to the Foundation for deposit in the endowment fund under paragraph (1) any amount (or portion thereof) received by the Secretary under section 105(a)(1) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1375(a)(1)) as a civil penalty assessed by the Secretary under that section.

"(ii) The Directors of the Board shall ensure that any amounts transferred to the Foundation under clause (i) for the endowment fund under paragraph (1) are deposited in that fund in accordance with this subparagraph.

"(3) It is the intent of Congress that in making expenditures from the endowment fund under paragraph (1) to carry out activities specified in that paragraph, the Foundation should give priority to funding projects that address the conservation of populations of whales that the Foundation determines —

"(A) are the most endangered (including the northern right whale (*Eubaleana glacialis*)); or

"(B) most warrant, and are most likely to benefit from, research management, or educational activities that may be funded with amounts made available from the fund.

"(g) In carrying out any action on the part of the Foundation under subsection (f), the Directors of the Board shall consult with the Administrator of the National Oceanic and Atmospheric Administration and the Marine Mammal Commission."

Study of Eastern Gray Whale Population

16 U.S.C. 917a note

The following section 203 of Pub. L. 106-555 (the Striped Bass Conservation, Atlantic Coastal Fisheries Management, and Marine Mammal Rescue Assistance Act of 2000), enacted December 21, 2000, has not been codified.

Sec. 203. (a) **STUDY.** — Not later than 180 days after the date of the enactment of this Act and subject to the availability of appropriations, the Secretary of Commerce shall initiate a study of the environmental and biological factors responsible for the significant increase in mortality events of the eastern gray whale population and other potential impacts these factors may be having on the eastern gray whale population.

(b) **CONSIDERATION OF WESTERN POPULATION INFORMATION.** — The Secretary should ensure that, to the greatest extent practicable, information from current and future studies of the western gray whale population is considered in the study under this section, so as to better understand the dynamics of each population and to test different hypotheses that may lead to an increased understanding of the mechanism driving their respective population dynamics.

(c) **AUTHORIZATION OF APPROPRIATIONS.** — In addition to other amounts authorized under this title, there are authorized to be appropriated to the Secretary to carry out this section—

(1) \$290,000 for fiscal year 2001; and

(2) \$500,000 for each of fiscal years 2002 through 2004.

Cook Inlet Beluga Whales

The following provision, enacted as section 3022 of Pub. L. 106-31 on May 21, 1999, and amended by Appendix B, section 627 of Pub. L. 106-553 on December 21, 2000, has not been codified.

Notwithstanding any other provision of law, the taking of a Cook Inlet beluga whale under the exemption provided in section 101(b) of the Marine Mammal Protection Act (16 U.S.C. 1371(a)) shall be considered a violation of such Act unless such taking occurs pursuant to a cooperative agreement between the National Marine Fisheries Service and affected Alaska Native organizations.

Endnotes for The Marine Mammal Protection Act of 1972 as Amended

1. The Act (Pub. L. 92-522), approved October 21, 1972, has been amended also by Pub. L. 93-205 (the Endangered Species Act), December 28, 1973; Pub. L. 94-265 (the Magnuson-Stevens Fisheries Conservation and Management Act), April 13, 1976; Pub. L. 95-136, October 18, 1977; Pub. L. 95-316, July 10, 1978; Pub. L. 96-470 (the Congressional Reports Elimination Act of 1980), October 19, 1980; Pub. L. 97-58, October 9, 1981; Pub. L. 97-389 (the Fisheries Amendments of 1982), December 29, 1982; Pub. L. 98-364, July 17, 1984; Pub. L. 99-659, November 14, 1986; Pub. L. 100-711 (the Marine Mammal Protection Act Amendments of 1988), November 23, 1988; Pub. L. 101-627 (the Fishery Conservation Amendments of 1990), November 28, 1990; Pub. L. 102-251, March 9, 1992; Pub. L. 102-523 (the International Dolphin Conservation Act of 1992), October 26, 1992; Pub. L. 102-582 (the High Seas Driftnet Fisheries Enforcement Act), November 2, 1992; Pub. L. 102-587 (the Oceans Act of 1992), November 4, 1992; Pub. L. 103-86, September 30, 1993; Pub. L. 103-228, March 31, 1994; and Pub. L. 103-238 (the Marine Mammal Protection Act Amendments of 1994), April 30, 1994; Pub. L. 104-43 (the Fisheries Act of 1995), November 3, 1995; Pub. L. 104-208, September 30, 1996; Pub. L. 104-297 (the Sustainable Fisheries Act), October 11, 1996; Pub. L. 105-18, June 12, 1997; Pub. L. 105-42 (the International Dolphin Conservation Program Act), August 15, 1997; Pub. L. 105-277, October 21, 1998; Pub. L. 106-31, May 21, 1999; Pub. L. 106-113, November 29, 1999; Pub. L. 106-555 (the Striped Bass Conservation, Atlantic Coastal Fisheries Management, and Marine Mammal Rescue Assistance Act of 2000), December 21, 2000.
2. The provision concerning the disposition of fines, enacted as part of Pub. L. 106-113, Div. B, section 1000(a)(3), technically is not part of the Marine Mammal Protection Act. It, however, has been codified at 16 U.S.C. 1375a as though it were.
3. The Dolphin Protection Consumer Information Act, enacted as section 901 of Pub. L. 101-627, technically is not part of the Marine Mammal Protection Act. It, however, has been codified at 16 U.S.C. 1385 as though it were.
4. As in original, probably intended to be "refereed scientific journal."
5. Although the National Marine Fisheries Service and the Fish and Wildlife Service continue to prepare the reports called for by this provision, the mandatory nature of the reporting requirements ceased on December 21, 1999, under section 3003 of the Federal Reports Elimination and Sunset Act of 1995 (Pub. L. 104-66).
6. As in original, probably intended to be "the authorized taking or importation...."
7. As in original, probably intended to be "within thirty days...."
8. Section 109(d)(2) was not amended when section 3(14) was redesignated as section 3(15) by Pub. L. 102-582. Reference to section 3(14)(B) should be to section 3(15)(B).
9. As in original, probably intended to be "with the purposes or policies...."
10. As in original, probably intended to be "or is in the possession of the master...."
11. As in original, probably intended to be "Advisors," as used elsewhere in the Act.
12. As in original, probably intended to be "which is engaged in a fishery."

13. The Dolphin Protection Consumer Information Act, enacted as section 901 of Pub. L. 101-627, technically is not part of the Marine Mammal Protection Act. It, however, has been codified at 16 U.S.C. 1385, as though it were.
14. Although the Marine Mammal Commission continues to prepare an annual report, the mandatory nature of this reporting requirement ceased on December 21, 1999, under section 3003 of the Federal Reports Elimination and Sunset Act of 1995 (Pub. L. 104-66).
15. As in original, reference should be to subsection 101(e).
16. This title may be cited as the Marine Mammal Rescue Assistance Act of 2000.
17. As in original, probably intended to be paragraph (7).

Public Law 104–297
104th Congress

An Act

To amend the Magnuson Fishery Conservation and Management Act to authorize appropriations, to provide for sustainable fisheries, and for other purposes.

Oct. 11, 1996

[S. 39]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Sustainable Fisheries Act”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Amendment of Magnuson Fishery Conservation and Management Act.

TITLE I—CONSERVATION AND MANAGEMENT

- Sec. 101. Findings; purposes; policy.
- Sec. 102. Definitions.
- Sec. 103. Authorization of appropriations.
- Sec. 104. Highly migratory species.
- Sec. 105. Foreign fishing and international fishery agreements.
- Sec. 106. National standards.
- Sec. 107. Regional fishery management councils.
- Sec. 108. Fishery management plans.
- Sec. 109. Action by the Secretary.
- Sec. 110. Other requirements and authority.
- Sec. 111. Pacific community fisheries.
- Sec. 112. State jurisdiction.
- Sec. 113. Prohibited acts.
- Sec. 114. Civil penalties and permit sanctions; rebuttable presumptions.
- Sec. 115. Enforcement.
- Sec. 116. Transition to sustainable fisheries.
- Sec. 117. North Pacific and northwest Atlantic Ocean fisheries.

TITLE II—FISHERY MONITORING AND RESEARCH

- Sec. 201. Change of title.
- Sec. 202. Registration and information management.
- Sec. 203. Information collection.
- Sec. 204. Observers.
- Sec. 205. Fisheries research.
- Sec. 206. Incidental harvest research.
- Sec. 207. Miscellaneous research.
- Sec. 208. Study of contribution of bycatch to charitable organizations.
- Sec. 209. Study of identification methods for harvest stocks.
- Sec. 210. Review of Northeast fishery stock assessments.
- Sec. 211. Clerical amendments.

TITLE III—FISHERIES FINANCING

- Sec. 301. Short title.
- Sec. 302. Individual fishing quota loans.
- Sec. 303. Fisheries financing and capacity reduction.

TITLE IV—MARINE FISHERY STATUTE REAUTHORIZATIONS

- Sec. 401. Marine fish program authorization of appropriations.

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note.

- Sec. 402. Interjurisdictional Fisheries Act amendments.
 Sec. 403. Anadromous fisheries amendments.
 Sec. 404. Atlantic coastal fisheries amendments.
 Sec. 405. Technical amendments to maritime boundary agreement.
 Sec. 406. Amendments to the Fisheries Act.

SEC. 2. AMENDMENT OF MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

TITLE I—CONSERVATION AND MANAGEMENT

SEC. 101. FINDINGS; PURPOSES; POLICY.

Section 2 (16 U.S.C. 1801) is amended—

(1) by striking subsection (a)(2) and inserting the following:

“(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.”;

(2) by inserting “to facilitate long-term protection of essential fish habitats,” in subsection (a)(6) after “conservation,”;

(3) by adding at the end of subsection (a) the following:

“(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.”;

(4) by striking “principles;” in subsection (b)(3) and inserting “principles, including the promotion of catch and release programs in recreational fishing;”;

(5) by striking “and” after the semicolon at the end of subsection (b)(5);

(6) by striking “development.” in subsection (b)(6) and inserting “development in a non-wasteful manner; and”;

(7) by adding at the end of subsection (b) the following:

“(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.”;

(8) in subsection (c)(3)—

(A) by striking “promotes” and inserting “considers”;
 and

(B) by inserting “minimize bycatch and” after “practical measures that”;
(9) striking “and” at the end of paragraph (c)(5);
(10) striking the period at the end of paragraph (c)(6) and inserting “; and”; and
(11) adding at the end of subsection (c) a new paragraph as follows:

“(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.”.

SEC. 102. DEFINITIONS.

Section 3 (16 U.S.C. 1802) is amended—

(1) by redesignating paragraphs (2) through (32) as paragraphs (5) through (35) respectively, and inserting after paragraph (1) the following:

“(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, United States Code) 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.”;

(2) in paragraph (7) (as redesignated)—

(A) by striking “COELENTERATA” from the heading of the list of corals and inserting “CNIDARIA”; and

(B) in the list appearing under the heading “CRUSTACEA”, by striking “Deep-sea Red Crab—Geryon quinque-dens” and inserting “Deep-sea Red Crab—Chaceon quinque-dens”;

(3) by redesignating paragraphs (9) through (35) (as redesignated) as paragraphs (11) through (37), respectively, and inserting after paragraph (8) (as redesignated) the following:

“(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.”;

(4) by redesignating paragraphs (16) through (37) (as redesignated) as paragraphs (17) through (38), respectively, and inserting after paragraph (15) (as redesignated) the following:

“(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, opera-

tors, and crew and United States fish processors that are based in such community.”;

(5) by redesignating paragraphs (21) through (38) (as redesignated) as paragraphs (22) through (39), respectively, and inserting after paragraph (20) (as redesignated) the following:

“(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 305(i).”;

(6) by striking “of one and one-half miles” in paragraph (23) (as redesignated) and inserting “of two and one-half kilometers”;

(7) by striking paragraph (28) (as redesignated), and inserting the following:

“(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.”;

(8) by redesignating paragraphs (29) through (39) (as redesignated) as paragraphs (31) through (41), respectively, and inserting after paragraph (28) (as redesignated) the following:

“(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.”;

(9) by redesignating paragraphs (32) through (41) (as redesignated) as paragraphs (34) through (43), respectively, and inserting after paragraph (31) (as redesignated) the following:

“(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.”;

(10) by redesignating paragraphs (36) through (43) (as redesignated) as paragraphs (37) through (44), respectively,

and inserting after paragraph (35) (as redesignated) the following:

“(36) 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.”;

(11) by striking “for which a fishery management plan prepared under title III or a preliminary fishery management plan prepared under section 201(g) has been implemented” in paragraph (42) (as redesignated) and inserting “regulated under this Act”; and

(12) by redesignating paragraph (44) (as redesignated) as paragraph (45), and inserting after paragraph (43) the following:

“(44) The term ‘vessel subject to the jurisdiction of the United States’ has the same meaning such term has in section 3(c) of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1903(c)).”.

SEC. 103. AUTHORIZATION OF APPROPRIATIONS.

The Act is amended by inserting after section 3 (16 U.S.C. 1802) the following:

“SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

16 USC 1803.

“There are authorized to be appropriated to the Secretary for the purposes of carrying out the provisions of this Act, 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.”.

SEC. 104. HIGHLY MIGRATORY SPECIES.

Section 102 (16 U.S.C. 1812) is amended by striking “promoting the objective of optimum utilization” and inserting “shall promote the achievement of optimum yield”.

SEC. 105. FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS.

(a) **AUTHORITY TO OPERATE UNDER TRANSSHIPMENT PERMITS.**—Section 201 (16 U.S.C. 1821) is amended—

(1) by striking paragraphs (1) and (2) of subsection (a) and inserting the following:

“(1) is authorized under subsections (b) or (c) or section 204(e), or under a permit issued under section 204(d);

“(2) is not prohibited under subsection (f); and”;

(2) by striking “(i)” in subsection (c)(2)(D) and inserting “(h)”;

(3) by striking subsection (f);

(4) by redesignating subsections (g) through (j) as subsections (f) through (i), respectively;

(5) in paragraph (2) of subsection (h) (as redesignated), redesignate subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively, and insert after subparagraph (A) the following:

“(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;”; and

(6) in subsection (i) (as redesignated) by striking “305” and inserting “304”.

(b) INTERNATIONAL FISHERY AGREEMENTS.—Section 202 (16 U.S.C. 1822) is amended—

(1) by adding before the period at the end of subsection (c) “or section 204(e)”;

(2) by adding at the end the following:

“(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 Act 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 Act; and

“(B) subject to approval by Congress under section 203.

“(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.”.

(c) PERIOD FOR CONGRESSIONAL REVIEW OF INTERNATIONAL FISHERY AGREEMENTS.—Section 203 (16 U.S.C. 1823) is amended—

(1) by striking “GOVERNING” in the section heading;

(2) by striking “agreement” each place it appears in subsection (a) and inserting “agreement, bycatch reduction agreement, or Pacific Insular Area fishery agreement”;

(3) by striking “60 calendar days of continuous session of the Congress” in subsection (a) and inserting “120 days (excluding any days in a period for which the Congress is adjourned sine die)”;

(4) by striking subsection (c);

(5) by redesignating subsection (d) as subsection (c); and

(6) by striking “agreement” in subsection (c)(2)(A), as redesignated, and inserting “agreement, bycatch reduction agreement, or Pacific Insular Area fishery agreement”.

(d) TRANSSHIPMENT PERMITS AND PACIFIC INSULAR AREA FISHING.—Section 204 (16 U.S.C. 1824) is amended—

Reports.

(1) by inserting “or subsection (d)” in the first sentence of subsection (b)(7) after “under paragraph (6)”;

(2) by striking “the regulations promulgated to implement any such plan” in subsection (b)(7)(A) and inserting “any applicable Federal or State fishing regulations”;

(3) by inserting “or subsection (d)” in subsection (b)(7)(D) after “paragraph (6)(B)”;

(4) by adding at the end the following:

“(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 Act;

“(B) the applicant will comply with the requirements described in section 201(c)(2) 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), which shall be com-

plied 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 Act, 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 title 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 Act;

“(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 203; 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 201(c), section 201(d), and section 201(h).

“(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), 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 201(h);

“(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 Act.

“(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 Act, 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).”.

(e) ATLANTIC HERRING TRANSSHIPMENT.—Within 30 days of receiving an application, the Secretary shall, under section 204(d) of the Magnuson Fishery Conservation and Management Act, as amended by this Act, issue permits to up to fourteen Canadian transport vessels that are not equipped for fish harvesting or processing, for the transshipment, within the boundaries of the State of Maine or within the portion of the exclusive economic zone east of the line 69 degrees 30 minutes west and within 12 nautical miles from the seaward boundary of that State, of Atlantic herring harvested by United States fishermen within the area described and used solely in sardine processing. In issuing a permit pursuant to this subsection, the Secretary shall provide a waiver under section 201(h)(2)(C) of the Magnuson Fishery Conservation and Management Act, as amended by this Act: *Provided*, That such vessels comply with Federal or State monitoring and reporting requirements for the Atlantic herring fishery, including the stationing of United States observers aboard such vessels, if necessary.

(f) LARGE SCALE DRIFTNET FISHING.—Section 206 (16 U.S.C. 1826) is amended—

(1) in subsection (e), by striking paragraphs (3) and (4), and redesignating paragraphs (5) and (6) as (3) and (4), respectively; and

(2) in subsection (f), by striking “(e)(6),” and inserting “(e)(4).”.

(g) RUSSIAN FISHING IN THE BERING SEA.—No later than September 30, 1997, the North Pacific Fishery Management Council, in consultation with the North Pacific and Bering Sea Advisory Body, 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 the institutional structures in Russia pertaining to stock assessment, management, and enforcement for fishery harvests in the Bering Sea, and recommendations for improving coordination between the United States and Russia for managing and conserving Bering Sea fishery resources of mutual concern.

Reports.

SEC. 106. NATIONAL STANDARDS.

(a) Section 301(a)(5) (16 U.S.C. 1851(a)(5)) is amended by striking “promote” and inserting “consider”.

(b) Section 301(a) (16 U.S.C. 1851(a)) is amended by adding at the end thereof the following:

“(8) Conservation and management measures shall, consistent with the conservation requirements of this Act (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.”.

SEC. 107. REGIONAL FISHERY MANAGEMENT COUNCILS.

(a) Section 302(a) (16 U.S.C. 1852(a)) is amended—

(1) by inserting “(1)” after the subsection heading;

(2) by redesignating paragraphs (1) through (8) as subparagraphs (A) through (H), respectively;

(3) by striking “section 304(f)(3)” wherever it appears and inserting “paragraph (3)”;

(4) in paragraph (1)(B), as amended—

(A) by striking “and Virginia” and inserting “Virginia, and North Carolina”;

(B) by inserting “North Carolina, and” after “except”;

(C) by striking “19” and inserting “21”; and

(D) by striking “12” and inserting “13”;

(5) by striking paragraph (1)(F), as redesignated, and inserting the following:

“(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) (at least one of whom shall be appointed from each such State), and including one appointed from an Indian tribe with Federally recognized fishing rights from California, Oregon, Washington, or Idaho in accordance with subsection (b)(5).”;

(6) by indenting the sentence at the end thereof and inserting “(2)” before “Each Council”; and

(7) by adding at the end the following:

“(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) Section 302(b) (16 U.S.C. 1852(b)) is amended—

(1) by striking “subsection (b)(2)” in paragraphs (1)(C) and (3), and inserting in both places “paragraphs (2) and (5)”;

(2) by striking the last sentence in paragraph (3) and inserting the following: “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.”; and

(3) by striking paragraph (5) and inserting after paragraph (4) the following:

“(5)(A) The Secretary shall appoint to the Pacific Council one representative of an Indian tribe with Federally 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.

Regulations.

“(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 (2) or (5) if—

“(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, United States Code, to have committed an act prohibited by section 307(1)(O).”.

(c) Section 302(d) (16 U.S.C. 1852(d)) is amended in the first sentence—

(1) by striking “each Council,” and inserting “each Council who are required to be appointed by the Secretary and”; and

(2) by striking “shall, until January 1, 1992,” and all that follows through “GS-16” and inserting “shall receive compensation at the daily rate for GS-15, step 7”.

(d) Section 302(e) (16 U.S.C. 1852(e)) is amended by adding at the end the following:

“(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.”.

(e) Section 302(g) (16 U.S.C. 1852(g)) is amended by redesignating paragraph (4) as paragraph (5), and by inserting after paragraph (3) the following:

“(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) 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.”.

(f) Section 302(h) (16 U.S.C. 1852(h)) is amended—

(1) by striking paragraph (1) and inserting the following:

“(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) in paragraph (2)—

(A) by striking “section 204(b)(4)(C),” in paragraph (2) and inserting “section 204(b)(4)(C) or section 204(d),”;

(B) by striking “304(c)(2)” and inserting “304(c)(4);”

and

(3) by striking “304(f)(3)” in paragraph (5) and inserting “subsection (a)(3)”.

(g) Section 302 is amended further by striking subsection (i), and by redesignating subsections (j) and (k) as subsections (i) and (j), respectively.

(h) Section 302(i), as redesignated, is amended—

(1) by striking “of the Councils” in paragraph (1) and inserting “established under subsection (g)”;

(2) by striking “of a Council:” in paragraph (2) and inserting “established under subsection (g).”;

(3) by striking “Council’s” in paragraph (2)(C);

(4) by adding the following at the end of paragraph (2)(C): “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 305(c), in which case public notice shall be given immediately.”;

(5) by adding the following at the end of paragraph (2)(D): “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.”;

(6) by striking paragraph (2)(E) and inserting:

“(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.”;

Records.

(7) by striking “by the Council” the first place it appears in paragraph (2)(F);

Certification.

(8) by inserting “or the Secretary, as appropriate” in paragraph (2)(F) after “of the Council”;

(9) by striking “303(d)” each place it appears in paragraph (2)(F) and inserting “402(b)”; and

(10) by striking “303(d)” in paragraph (4) and inserting “402(b)”.

(i) Section 302(j), as redesignated, is amended—

(1) by inserting “and Recusal” after “Interest” in the subsection heading;

(2) by striking paragraph (1) and inserting the following:

“(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); or

“(ii) is a voting member of a Council appointed—

“(I) under subsection (b)(2); or

“(II) under subsection (b)(5) 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).”;

(3) by striking “(1)(A)” in paragraph (3)(A) and inserting “(1)(A)(i)”;

(4) by striking “(1)(B) or (C)” in paragraph (3)(B) and inserting “(1)(A)(ii)”;

(5) by striking “(1)(B) or (C)” in paragraph (4) and inserting “(1)(A)(ii)”;

(6)(A) by striking “and” at the end of paragraph (5)(A);

(B) by striking the period at the end of paragraph (5)(B) and inserting a semicolon and the word “and”; and

(C) by adding at the end of paragraph (5) the following:

“(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.”;

(7) by striking “(1)(B) or (C)” in paragraph (6) and inserting “(1)(A)(ii)”;

(8) by redesignating paragraph (7) as paragraph (8) and inserting after paragraph (6) the following:

“(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.

Regulations.

“(F) The Secretary, in consultation with the Councils and by not later than one year from the date of enactment of the Sustainable Fisheries Act, 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).”; and

(9) by striking “(1)(B) or (C)” in paragraph (8), as redesignated, and inserting “(1)(A)(ii)”.

SEC. 108. FISHERY MANAGEMENT PLANS.

(a) **REQUIRED PROVISIONS.**—Section 303(a) (16 U.S.C. 1853(a)) is amended—

(1) in paragraph (1)(A) by inserting “and rebuild overfished stocks” after “overfishing”;

(2) by inserting “commercial, recreational, and charter fishing in” in paragraph (5) after “with respect to”;

(3) by striking paragraph (7) and inserting the following:

“(7) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), 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;”;

(4) by striking “and” at the end of paragraph (8);

(5) by inserting “and fishing communities” after “fisheries” in paragraph (9)(A);

(6) by striking the period at the end of paragraph (9) and inserting a semicolon; and

(7) by adding at the end the following:

“(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) IMPLEMENTATION.—Not later than 24 months after the date of enactment of this Act, 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.

(c) DISCRETIONARY PROVISIONS.—Section 303(b) (16 U.S.C. 1853(b)) is amended—

(1) by striking paragraph (3) and inserting the following:

“(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 204;”;

(2) by striking “system for limiting access to” in paragraph (6) and inserting “limited access system for”;

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note.

(3) by striking “fishery” in subparagraph (E) of paragraph (6) and inserting “fishery and any affected fishing communities”;

(4) by inserting “one or more” in paragraph (8) after “require that”;

(5) by striking “and” at the end of paragraph (9);

(6) by redesignating paragraph (10) as paragraph (12); and

(7) by inserting after paragraph (9) the following:

“(10) include, consistent with the other provisions of this Act, 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”.

(d) REGULATIONS.—Section 303 (16 U.S.C. 1853) is amended by striking subsection (c) and inserting the following:

“(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 304; 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 304.”.

(e) INDIVIDUAL FISHING QUOTAS.—Subsection 303 (16 U.S.C. 1853) is amended further by striking subsections (d), (e), and (f), and inserting the following:

“(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 Act 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, re-approved, 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 307, 308, and 309;

“(B) may be revoked or limited at any time in accordance with this Act;

“(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 304(d)(2) to be used, pursuant to section 1104A(a)(7) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1274(a)(7)), 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 Act, 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 304(d)(2) 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.”

(f) INDIVIDUAL FISHING QUOTA REPORT.—(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 rec-

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note.

ommendations 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 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 Fishery Conservation and Management Act, as amended by this Act.

Establishment.

(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.

Reports.
Federal Register,
publication.

(6) Section 210 of Public Law 104-134 is hereby repealed.

16 USC 1851
note.

(g) NORTH PACIFIC LOAN PROGRAM.—(1) By not later than October 1, 1997 the North Pacific Fishery Management Council shall recommend to the Secretary of Commerce a program which

uses the full amount of fees authorized to be used under section 303(d)(4) of the Magnuson Fishery Conservation and Management Act, as amended by this Act, in the halibut and sablefish fisheries off Alaska to guarantee obligations in accordance with such section.

(2)(A) For the purposes of this subsection, the phrase “fishermen who fish from small vessels” in section 303(d)(4)(A)(i) of such Act shall mean fishermen wishing to purchase individual fishing quotas for use from Category B, Category C, or Category D vessels, as defined in part 676.20(c) of title 50, Code of Federal Regulations (as revised as of October 1, 1995), whose aggregate ownership of individual fishing quotas will not exceed the equivalent of a total of 50,000 pounds of halibut and sablefish harvested in the fishing year in which a guarantee application is made if the guarantee is approved, who will participate aboard the fishing vessel in the harvest of fish caught under such quotas, who have at least 150 days of experience working as part of the harvesting crew in any United States commercial fishery, and who do not own in whole or in part any Category A or Category B vessel, as defined in such part and title of the Code of Federal Regulations.

(B) For the purposes of this subsection, the phrase “entry level fishermen” in section 303(d)(4)(A)(ii) of such Act shall mean fishermen who do not own any individual fishing quotas, who wish to obtain the equivalent of not more than a total of 8,000 pounds of halibut and sablefish harvested in the fishing year in which a guarantee application is made, and who will participate aboard the fishing vessel in the harvest of fish caught under such quotas.

(h) COMMUNITY DEVELOPMENT QUOTA REPORT.—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.

Reports.
16 USC 1855
note.

(i) EXISTING QUOTA PLANS.—Nothing in this Act 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.

16 USC 1853
note.

SEC. 109. ACTION BY THE SECRETARY.

(a) SECRETARIAL REVIEW OF PLANS AND REGULATIONS.—Section 304 (16 U.S.C. 1854) is amended by striking subsections (a) and (b) and inserting the following:

“(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 Act, 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.

Federal Register,
publication.

“(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 303(a)(6).

“(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—

Notice.

“(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), 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 303(c), 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 Act and other applicable law. Within 15 days of initiating such evaluation the Secretary shall make a determination and—

Federal Register,
publication.

“(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

Notification.

“(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 Act, 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).

Federal Register,
publication.

“(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.”.

(b) PREPARATION BY THE SECRETARY.—Section 304(c) (16 U.S.C. 1854(c)) is amended—

(1) by striking the subsection heading and inserting “PREPARATION AND REVIEW OF SECRETARIAL PLANS”;

(2) by striking “or” at the end of paragraph (1)(A);

(3) by striking all that follows “further revised plan” in paragraph (1) and inserting “or amendment; or”;

(4) by inserting after subparagraph (1)(B), as amended, the following new subparagraph:

“(C) the Secretary is given authority to prepare such plan or amendment under this section.”;

(5) by striking paragraph (2) and inserting:

“(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.”;

(6) by inserting “for a fishery under the authority of a Council” after “paragraph (1)” in paragraph (3);

(7) by striking “system described in section 303(b)(6)” in paragraph (3) and inserting “system, including any individual fishing quota program”; and

(8) by inserting after paragraph (3) the following new paragraphs:

“(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.

Federal Register,
publication.

“(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 Act, and with any other applicable law.”.

Regulations.

Federal Register,
publication.

(c) INDIVIDUAL FISHING QUOTA AND COMMUNITY DEVELOPMENT QUOTA FEES.—Section 304(d) (16 U.S.C. 1854(d)) is amended—

(1) by inserting “(1)” immediately before the first sentence; and

(2) by inserting at the end the following:

“(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 Act and shall be

deposited in the Limited Access System Administration Fund established under section 305(h)(5)(B), except that the portion of any such fees reserved under section 303(d)(4)(A) 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 504(b)(1) of the Federal Credit Reform Act (2 U.S.C. 661c(b)(1)).

“(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.”.

16 USC 1854
note.

(d) DELAY OF FEES.—Notwithstanding any other provision of law, the Secretary shall not begin the collection of fees under section 304(d)(2) of the Magnuson Fishery Conservation and Management Act, 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.

(e) OVERFISHING.—Section 304(e) (16 U.S.C. 1854(e)) is amended to read as follows:

“(e) REBUILDING OVERFISHED FISHERIES.—

Reports.

“(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.

Notification.

“(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.

Federal Register,
publication.

“(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 302(a)(3)) 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).

“(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 305(c) until such measures can be replaced by such plan, amendment, or regulations. Such measures, if otherwise in compliance with the provisions of this Act, 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 302(a)(3) 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.”.

Notification.

(f) FISHERIES UNDER AUTHORITY OF MORE THAN ONE COUNCIL.—Section 304(f) is amended by striking paragraph (3).

(g) ATLANTIC HIGHLY MIGRATORY SPECIES.—Section 304 (16 U.S.C. 1854) is amended further by striking subsection (g) and inserting the following:

“(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) with respect to any highly migratory species fishery to which section 302(a)(3) 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 302(g);

“(B) establish an advisory panel under section 302(g) 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 3(2), 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 Act.”

(h) COMPREHENSIVE MANAGEMENT SYSTEM FOR ATLANTIC PELAGIC LONGLINE FISHERY.—(1) The Secretary of Commerce shall—

(A) establish an advisory panel under section 302(g)(4) of the Magnuson Fishery Conservation and Management Act, 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 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.

(i) REPEAL OR REVOCATION OF A FISHERY MANAGEMENT PLAN.—Section 304, as amended, is further amended by adding at the end the following:

“(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.”

(j) AMERICAN LOBSTER FISHERY.—Section 304(h) of the Magnuson Fishery Conservation and Management Act, as amended by this Act, shall not apply to the American Lobster Fishery Management Plan.

16 USC 1854
note.

SEC. 110. OTHER REQUIREMENTS AND AUTHORITY.

(a) Section 305 (18 U.S.C. 1855) is amended—

(1) by striking the title and subsection (a);

(2) by redesignating subsection (b) as subsection (f); and

(3) by inserting the following before subsection (c):

“SEC. 305. OTHER REQUIREMENTS AND AUTHORITY.

“(a) GEAR EVALUATION AND NOTIFICATION OF ENTRY.—

“(1) Not later than 18 months after the date of enactment of the Sustainable Fisheries Act, the Secretary shall publish in the Federal Register, after notice and an opportunity for public comment, a list of all fisheries—

Federal Register,
publication.

“(A) under the authority of each Council and all fishing gear used in such fisheries, based on information submitted by the Councils under section 303(a); and

	“(B) to which section 302(a)(3) applies and all fishing gear used in such fisheries.
Guidelines.	“(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).
Effective date.	“(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 302(a)(3) applies. A signed return receipt shall serve as adequate evidence of such notice and as the date upon which the 90-day period begins.
Publication.	“(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) 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 302(a)(3) applies, determines that such unlisted gear or unlisted fishery would compromise the effectiveness of conservation and management efforts under this Act.
	“(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.
Regulations. Guidelines.	“(b) FISH HABITAT.—(1)(A) The Secretary shall, within 6 months of the date of enactment of the Sustainable Fisheries Act, 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 Act.

“(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 Act, 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.”

(b) Section 305(c) (16 U.S.C. 1855(c)) is amended—

(1) in the heading by striking “ACTIONS” and inserting “ACTIONS AND INTERIM MEASURES”;

(2) in paragraphs (1) and (2)—

(A) by striking “involving” and inserting “or that interim measures are needed to reduce overfishing for”;

and

(B) by inserting “or interim measures” after “emergency regulations”;

(C) by inserting “or overfishing” after “emergency”;

and

(3) in paragraph (3)—

(A) by inserting “or interim measure” after “emergency regulation” each place such term appears;

(B) by striking subparagraph (B);

(C) by redesignating subparagraph (C) as subparagraph (D); and

(D) by inserting after subparagraph (A) the following:

“(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”.

16 USC 1855.

(c) Section 305(e) is amended—

(1) by striking “12291, dated February 17, 1981,” and inserting “12866, dated September 30, 1993,”; and

(2) by striking “subsection (c) or section 304(a) and (b)” and inserting “subsections (a), (b), and (c) of section 304”.

(d) Section 305, as amended, is further amended by adding at the end the following:

“(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 304(e)(5), for a fishery for which the Secretary has authority under section 304(g), or for any other fishery with the approval of the appropriate Council.

Regulations.

“(B) No later than 180 days after the date of enactment of the Sustainable Fisheries Act, 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, United States Code.

Reports.

“(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.

Federal Register,
publication.

“(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.—

Establishment.

“(1) Within 6 months after the date of enactment of the Sustainable Fisheries Act, the Secretary shall establish an exclusive central registry system (which may be administered on a regional basis) for limited access system permits estab-

lished under section 303(b)(6) 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 402(b); 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 304(d)(1), 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,

Public
information.

Regulations.

Notification.

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 Act 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.”.

16 USC 1855
note.

(e) **REGISTRY TRANSITION.**—Security interests on permits described under section 305(h)(1) of the Magnuson Fishery Conservation and Management Act, 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.

SEC. 111. PACIFIC COMMUNITY FISHERIES.

(a) **HAROLD SPARCK MEMORIAL COMMUNITY DEVELOPMENT QUOTA PROGRAM.**—Section 305, as amended, is amended further by adding at the end:

“(i) **ALASKA AND WESTERN PACIFIC COMMUNITY DEVELOPMENT PROGRAMS.**—

Establishment.

“(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 304, 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 Pacific region;

“(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 Act, 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 304(d)(2) 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 the date of enactment of the Sustainable Fisheries Act, 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.”.

(b) WESTERN PACIFIC DEMONSTRATION PROJECTS.—(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 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.

Reports.

(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 Fishery Conservation and Management Act, as amended by this Act.

SEC. 112. STATE JURISDICTION.

(a) Paragraph (3) of section 306(a) (16 U.S.C. 1856(a)) is amended to read as follows:

“(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

Notification.

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.

Termination date.

“(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 Act is approved and implemented for such fishery.”.

(b) Section 306(b) (16 U.S.C. 1856(b)) is amended by adding at the end the following:

“(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) Section 306(c)(1) (16 U.S.C. 1856(c)(1)) is amended—

(1) by striking “(4)(C); and” in subparagraph (A) and inserting “(4)(C) or has received a permit under section 204(d);”;

(2) by striking the period at the end of subparagraph (B) and inserting a semicolon and the word “and”; and

(3) by inserting after subparagraph (B) the following:

Reports. Regulations.

“(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.”.

16 USC 1856 note.

(d) INTERIM AUTHORITY FOR DUNGENESS CRAB.—(1) Subject to the provisions of this subsection and notwithstanding section 306(a) of the Magnuson 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 Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

Applicability.

(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 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.

(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.

Termination
date.

Reports.

SEC. 113. PROHIBITED ACTS.

(a) Section 307(1)(J)(i) (16 U.S.C. 1857(1)(J)(i)) is amended—

(1) by striking “plan,” and inserting “plan”; and

(2) by inserting before the semicolon the following: “, 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.)”.

(b) Section 307(1)(K) (16 U.S.C. 1857(1)(K)) is amended—

(1) by striking “knowingly steal or without authorization, to” and inserting “to steal or attempt to steal or to negligently and without authorization”; and

(2) by striking “gear, or attempt to do so,” and insert “gear;”.

(c) Section 307(1)(L) (16 U.S.C. 1857(1)(L)) is amended to read as follows:

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

(d) Section 307(1) (16 U.S.C. 1857(1)) is amended—

(1) by striking “or” at the end of subparagraph (M);

(2) by striking “pollock.” in subparagraph (N) and inserting “pollock; or”; and

(3) by adding at the end the following:

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

(e) Section 307(2)(A) (16 U.S.C. 1857(2)(A)) is amended to read as follows:

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

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

“(ii) fish processing permitted under section 306(c);

or

“(iii) transshipment at sea of fish or fish products within the boundaries of any State in accordance with a permit approved under section 204(d);”.

(f) Section 307(2)(B) (16 U.S.C. 1857(2)(B)) is amended—

(1) by striking “(j)” and inserting “(i)”; and

(2) by striking “204(b) or (c)” and inserting “204(b), (c), or (d)”.

(g) Section 307(3) (16 U.S.C. 1857(3)) is amended to read as follows:

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

(h) Section 307(4) (16 U.S.C. 1857(4)) is amended by inserting “or within the boundaries of any State” after “zone”.

SEC. 114. CIVIL PENALTIES AND PERMIT SANCTIONS; REBUTTABLE PRESUMPTIONS.

(a) Section 308(a) (16 U.S.C. 1858(a)) is amended by striking “ability to pay,” and adding at the end the following new sentence: “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) The first sentence of section 308(b) (16 U.S.C. 1858(b)) is amended to read as follows: “Any person against whom a civil penalty is assessed under subsection (a) or against whom a permit sanction is imposed under subsection (g) (other than a permit suspension for nonpayment of penalty or fine) may obtain review thereof in the United States district court for the appropriate dis-

trict by filing a complaint against the Secretary in such court within 30 days from the date of such order.”.

(c) Section 308(g)(1)(C) (16 U.S.C. 1858(g)(1)(C)) is amended by striking the matter from “or (C) any” through “overdue,” and inserting the following: “(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.”.

(d) Section 310(e) (16 U.S.C. 1860(e)) is amended by adding at the end the following new paragraph:

“(3) For purposes of this Act, 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.”.

SEC. 115. ENFORCEMENT.

(a) The second sentence of section 311(d) (16 U.S.C. 1861(d)) is amended—

(1) by striking “Guam, any Commonwealth, territory, or” and inserting “Guam or any”; and

(2) by inserting a comma before the period and the following: “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”.

(b) Section 311(e)(1) (16 U.S.C. 1861(e)(1)) is amended—

(1) by striking “fishery” each place it appears and inserting “marine”;

(2) by inserting “of not less than 20 percent of the penalty collected or \$20,000, whichever is the lesser amount,” after “reward” in subparagraph (B), and

(3) by striking subparagraph (E) and inserting the following:

“(E) claims of parties in interest to property disposed of under section 612(b) of the Tariff Act of 1930 (19 U.S.C. 1612(b)), as made applicable by section 310(c) of this Act 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”.

(c) Section 311(e)(2) (16 U.S.C. 1861(e)(2)) is amended to read as follows:

“(2) Any person found in an administrative or judicial proceeding to have violated this Act 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.”.

(d) Section 311 (16 U.S.C. 1861) is amended by redesignating subsection (g) as subsection (h), and by inserting the following after subsection (f):

“(g) ENFORCEMENT IN THE 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.”

(e) Section 311 (16 U.S.C. 1861), as amended by subsection (d), is amended by striking “201(b), (c),” in subsection (i)(1), as redesignated, and inserting “201(b) or (c), or section 204(d),”.

SEC. 116. TRANSITION TO SUSTAINABLE FISHERIES.

16 USC 1861a.

(a) Section 312 is amended to read as follows:

“SEC. 312. 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—

Appropriation
authorization.

“(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 1111 of title XI of the Merchant Marine Act, 1936.

“(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 2(b)(1)(A) of the Act of August 11, 1939 (15 U.S.C. 713c-3(b)(1)(A); the Saltonstall-Kennedy Act);

“(B) appropriated for the purposes of this section;

“(C) provided by an industry fee system established under subsection (d) and in accordance with section 1111 of title XI of the Merchant Marine Act, 1936; 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), shall be paid into the fishing capacity reduction fund established under section 1111 of title XI of the Merchant Marine Act, 1936.

“(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—

Notification.

“(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 304(d) 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 1111 of title XI of the Merchant Marine Act, 1936. 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.

Federal Register, publication.

“(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—

Public information.

“(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.

Federal Register, publication.

“(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.”.

(b) **STUDY OF FEDERAL INVESTMENT.**—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 on the role of the Federal Government in—

Establishment.
Reports.
16 USC 1861a
note.

(1) subsidizing the expansion and contraction of fishing capacity in fishing fleets managed under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.); and

(2) otherwise influencing the aggregate capital investments in fisheries.

(c) Section 2(b)(1)(A) of the Act of August 11, 1939 (15 U.S.C. 713c3(b)(1)(A)) is amended—

15 USC 713c-3.

(1) by striking “and” at the end of clause (ii);

(2) by striking the period at the end of clause (iii) and inserting a semicolon and the word “and”; and

(3) by adding at the end the following new clause:

“(iv) to fund the Federal share of a fishing capacity reduction program established under section 312 of the Magnuson Fishery Conservation and Management Act; and”.

SEC. 117. NORTH PACIFIC AND NORTHWEST ATLANTIC OCEAN FISHERIES.

(a) **NORTH PACIFIC FISHERIES CONSERVATION.**—Section 313 (16 U.S.C. 1862) is amended—

(1) by striking “RESEARCH PLAN” in the section heading and inserting “CONSERVATION”;

(2) in subsection (a) by striking “North Pacific Fishery Management Council” and inserting “North Pacific Council”; and

(3) by adding at the end the following:

“(f) **BYCATCH REDUCTION.**—In implementing section 303(a)(11) 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 304(d), the North Pacific Council may submit, and the Secretary may approve, consistent with the provisions of this Act, 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 303(d), and in addition to the authority provided in section 303(b)(10), 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) 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 Act, 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, United States Code) 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.

Reports.

“(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.”

(b) NORTHWEST ATLANTIC OCEAN FISHERIES.—Section 314 (16 U.S.C. 1863) is amended by striking “1997” in subsection (a)(4) and inserting “1999”.

TITLE II—FISHERY MONITORING AND RESEARCH

SEC. 201. CHANGE OF TITLE.

The heading of title IV (16 U.S.C. 1881 et seq.) is amended to read as follows:

“TITLE IV—FISHERY MONITORING AND RESEARCH”.

SEC. 202. REGISTRATION AND INFORMATION MANAGEMENT.

Title IV (16 U.S.C. 1881 et seq.) is amended by inserting after the title heading the following:

“SEC. 401. REGISTRATION AND INFORMATION MANAGEMENT.

16 USC 1881.

“(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 Act, 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 402(b); and

“(B) the timely release or availability to the public of information collected under this section consistent with section 402(b).

“(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 303(a)(5) or requested by the Council under section 402.

“(d) USE OF REGISTRATION.—Any registration recommended under this section shall not be considered a permit for the purposes of this Act, 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 Act.

Federal Register,
publication.

“(e) PUBLIC COMMENT.—Within one year after the date of enactment of the Sustainable Fisheries Act, 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). 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.

Proposals.

“(f) CONGRESSIONAL TRANSMITTAL.—Within 60 days after the end of the comment period and after consideration of comments received under subsection (e), 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); 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 the date of enactment of the Sustainable Fisheries Act, 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.”

SEC. 203. INFORMATION COLLECTION.

Section 402 is amended to read as follows:

16 USC 1881a.

“SEC. 402. 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.

Regulations.

“(b) CONFIDENTIALITY OF INFORMATION.—(1) Any information submitted to the Secretary by any person in compliance with any requirement under this Act 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 Act.

Regulations.

“(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 Act, 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 Act or the use, release, or publication of bycatch information pursuant to paragraph (1)(E).

Regulations.

“(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 Act, 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 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.”.

SEC. 204. OBSERVERS.

Section 403 is amended to read as follows:

16 USC 1881b

“SEC. 403. OBSERVERS.

“(a) **GUIDELINES FOR CARRYING OBSERVERS.**—Within one year after the date of enactment of the Sustainable Fisheries Act, 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—

Regulations.

“(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 Act 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.)”.

SEC. 205. FISHERIES RESEARCH.

Section 404 is amended to read as follows:

16 USC 1881c.

“SEC. 404. 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 Act. 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.

Federal Register,
publication.

“(b) **STRATEGIC PLAN.**—Within one year after the date of enactment of the Sustainable Fisheries Act, 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);

“(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 401 that will permit the full use of information in the support of effective fishery conservation and management.

Federal Register,
publication.

“(d) **PUBLIC NOTICE.**—In developing the plan required under subsection (a), 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 develop-

ment 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.”.

SEC. 206. INCIDENTAL HARVEST RESEARCH.

Section 405 is amended to read as follows:

16 USC 1881d.

“SEC. 405. INCIDENTAL HARVEST RESEARCH.

“(a) **COLLECTION OF INFORMATION.**—Within nine months after the date of enactment of the Sustainable Fisheries Act, 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.

Public
information.

“(b) **IDENTIFICATION OF STOCK.**—The program concluded pursuant to subsection (a) 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), 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 the enactment of the Sustainable Fisheries Act, 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 Act 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.”.

SEC. 207. MISCELLANEOUS RESEARCH.

(a) FISHERIES SYSTEMS RESEARCH.—Section 406 (16 U.S.C. 1882) is amended to read as follows:

“SEC. 406. FISHERIES SYSTEMS RESEARCH.

“(a) ESTABLISHMENT OF PANEL.—Not later than 180 days after the date of enactment of the Sustainable Fisheries Act, the Secretary shall establish an advisory panel under this Act 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), solicit recommendations from the National Academy of Sciences.

“(d) REPORT.—Within 2 years after the date of enactment of this Act, 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 302(g).”.

(b) GULF OF MEXICO RED SNAPPER RESEARCH.—Title IV of the Act (16 U.S.C. 1882) is amended by adding the following new section:

“SEC. 407. GULF OF MEXICO RED SNAPPER RESEARCH.

“(a) INDEPENDENT PEER REVIEW.—(1) Within 30 days of the date of enactment of the Sustainable Fisheries Act, 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 Act; 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 Act 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 the date of enactment of the Sustainable Fisheries Act.

Reports.

“(b) PROHIBITION.—In addition to the restrictions under section 303(d)(1)(A), 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 Act 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—

Notification.

“(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 the date of enactment of the Sustainable Fisheries Act 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.”.

16 USC 1881c
note.

SEC. 208. STUDY OF CONTRIBUTION OF BYCATCH TO CHARITABLE ORGANIZATIONS.

(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, 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 Fishery Conservation and Management Act, as amended by section 102 of this Act.

SEC. 209. STUDY OF IDENTIFICATION METHODS FOR HARVEST STOCKS.

(a) IN GENERAL.—The Secretary of Commerce shall conduct a study to determine the best possible method of identifying various Atlantic and Pacific salmon and steelhead stocks in the ocean at time of harvest. The study shall include an assessment of—

(1) coded wire tags;

(2) fin clipping; and

(3) other identification methods.

(b) **REPORT.**—The Secretary shall report the results of the study, together with any recommendations for legislation deemed necessary based on the study, within 6 months after the date of enactment of this Act to the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

SEC. 210. REVIEW OF NORTHEAST FISHERY STOCK ASSESSMENTS.

The National Academy of Sciences, in consultation with regionally recognized fishery experts, shall conduct a peer review of Canadian and United States stock assessments, information collection methodologies, biological assumptions and projections, and other relevant scientific information used as the basis for conservation and management in the Northeast multispecies fishery. The National Academy of Sciences shall submit the results of such review to the Congress and the Secretary of Commerce no later than March 1, 1997.

SEC. 211. CLERICAL AMENDMENTS.

The table of contents is amended by striking the matter relating to title IV and inserting the following:

“Sec. 312. Transition to sustainable fisheries.

“Sec. 313. North Pacific fisheries conservation.

“Sec. 314. Northwest Atlantic Ocean fisheries reinvestment program.

“TITLE IV—FISHERY MONITORING AND RESEARCH

“Sec. 401. Registration and information management.

“Sec. 402. Information collection.

“Sec. 403. Observers.

“Sec. 404. Fisheries research.

“Sec. 405. Incidental harvest research.

“Sec. 406. Fisheries systems research.

“Sec. 407. Gulf of Mexico red snapper research.”.

TITLE III—FISHERIES FINANCING

Fisheries
Financing Act.

SEC. 301. SHORT TITLE.

This title may be cited as the “Fisheries Financing Act”.

46 USC app.
1245 note.

SEC. 302. INDIVIDUAL FISHING QUOTA LOANS.

(a) **AMENDMENT OF MERCHANT MARINE ACT, 1936.**—Section 1104A of the Merchant Marine Act, 1936 (46 U.S.C. App. 1274) is amended—

(1) by striking “or” at the end of subsection (a)(5);

(2) by striking the period at the end of subsection (a)(6) and inserting a semicolon and “or”;

(3) by adding at the end of subsection (a) the following:

“(7) financing or refinancing, including, but not limited to, the reimbursement of obligors for expenditures previously made, for the purchase of individual fishing quotas in accordance with section 303(d)(4) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853(d)(4)).”; and

(4) by striking “paragraph (6)” in the last sentence of subsection (a) and inserting “paragraphs (6) and (7)”; and

(5) by striking “equal to” in the third proviso of subsection (b)(2) and inserting “not to exceed”.

(b) **PROHIBITION.**—Until October 1, 2001, no new loans may be guaranteed by the Federal Government for the construction of new fishing vessels if the construction will result in an increased

46 USC app.
1274 note.

harvesting capacity within the United States exclusive economic zone.

SEC. 303. FISHERIES FINANCING AND CAPACITY REDUCTION.

(a) CAPACITY REDUCTION AND FINANCING AUTHORITY.—Title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.), is amended by adding at the end the following new sections:

46 USC app.
1279f.

“SEC. 1111. (a) The Secretary is authorized to guarantee the repayment of debt obligations issued by entities under this section. Debt obligations to be guaranteed may be issued by any entity that has been approved by the Secretary and has agreed with the Secretary to such conditions as the Secretary deems necessary for this section to achieve the objective of the program and to protect the interest of the United States.

“(b) Any debt obligation guaranteed under this section shall—

“(1) be treated in the same manner and to the same extent as other obligations guaranteed under this title, except with respect to provisions of this title that by their nature cannot be applied to obligations guaranteed under this section;

“(2) have the fishing fees established under the program paid into a separate subaccount of the fishing capacity reduction fund established under this section;

“(3) not exceed \$100,000,000 in an unpaid principal amount outstanding at any one time for a program;

“(4) have such maturity (not to exceed 20 years), take such form, and contain such conditions as the Secretary determines necessary for the program to which they relate;

“(5) have as the exclusive source of repayment (subject to the proviso in subsection (c)(2)) and as the exclusive payment security, the fishing fees established under the program; and

“(6) at the discretion of the Secretary be issued in the public market or sold to the Federal Financing Bank.

“(c)(1) There is established in the Treasury of the United States a separate account which shall be known as the fishing capacity reduction fund (referred to in this section as the ‘fund’). Within the fund, at least one subaccount shall be established for each program into which shall be paid all fishing fees established under the program and other amounts authorized for the program.

“(2) Amounts in the fund shall be available, without appropriation or fiscal year limitation, to the Secretary to pay the cost of the program, including payments to financial institutions to pay debt obligations incurred by entities under this section: *Provided*, That funds available for this purpose from other amounts available for the program may also be used to pay such debt obligations.

“(3) Sums in the fund that are not currently needed for the purpose of this section shall be kept on deposit or invested in obligations of the United States.

“(d) The Secretary is authorized and directed to issue such regulations as the Secretary deems necessary to carry out this section.

“(e) For the purposes of this section, the term ‘program’ means a fishing capacity reduction program established under section 312 of the Magnuson Fishery Conservation and Management Act.

46 USC app.
1279g.

“SEC. 1112. (a) Notwithstanding any other provision of this title, all obligations involving any fishing vessel, fishery facility, aquaculture facility, individual fishing quota, or fishing capacity

reduction program issued under this title after the date of enactment of the Sustainable Fisheries Act shall be direct loan obligations, for which the Secretary shall be the obligee, rather than obligations issued to obligees other than the Secretary and guaranteed by the Secretary. All direct loan obligations under this section shall be treated in the same manner and to the same extent as obligations guaranteed under this title except with respect to provisions of this title which by their nature can only be applied to obligations guaranteed under this title.

“(b) Notwithstanding any other provisions of this title, the annual rate of interest which obligors shall pay on direct loan obligations under this section shall be fixed at two percent of the principal amount of such obligations outstanding plus such additional percent as the Secretary shall be obligated to pay as the interest cost of borrowing from the United States Treasury the funds with which to make such direct loans.”.

TITLE IV—MARINE FISHERY STATUTE REAUTHORIZATIONS

SEC. 401. MARINE FISH PROGRAM AUTHORIZATION OF APPROPRIATIONS.

(a) **FISHERIES INFORMATION COLLECTION AND ANALYSIS.**—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out fisheries information and analysis activities under the Fish and Wildlife Act of 1956 (16 U.S.C. 742a et seq.) and any other law involving those activities, \$51,800,000 for fiscal year 1997, and \$52,345,000 for each of the fiscal years 1998, 1999, and 2000. Such activities may include, but are not limited to, the collection, analysis, and dissemination of scientific information necessary for the management of living marine resources and associated marine habitat.

(b) **FISHERIES CONSERVATION AND MANAGEMENT OPERATIONS.**—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out activities relating to fisheries conservation and management operations under the Fish and Wildlife Act of 1956 (16 U.S.C. 742a et seq.) and any other law involving those activities, \$29,028,000 for fiscal year 1997, and \$29,899,000 for each of the fiscal years 1998, 1999, and 2000. Such activities may include, but are not limited to, development, implementation, and enforcement of conservation and management measures to achieve continued optimum use of living marine resources, hatchery operations, habitat conservation, and protected species management.

(c) **FISHERIES STATE AND INDUSTRY COOPERATIVE PROGRAMS.**—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out State and industry cooperative programs under the Fish and Wildlife Act of 1956 (16 U.S.C. 742a et seq.) and any other law involving those activities, \$27,932,000 for fiscal year 1997, and \$28,226,000 for each of the fiscal years 1998, 1999, and 2000. These activities include, but are not limited to, ensuring the quality and safety of seafood products and providing grants to States for improving the management of interstate fisheries.

(d) AUTHORIZATION OF APPROPRIATIONS FOR CHESAPEAKE BAY OFFICE.—Section 2(e) of the National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act (Public Law 98-210; 97 Stat. 1409) is amended—

(1) by striking “1992 and 1993” and inserting “1997 and 1998”;

(2) by striking “establish” and inserting “operate”;

(3) by striking “306” and inserting “307”; and

(4) by striking “1991” and inserting “1992”.

(e) RELATION TO OTHER LAWS.—Authorizations under this section shall be in addition to monies authorized under the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 et seq.), the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 3301 et seq.), the Anadromous Fish Conservation Act (16 U.S.C. 757 et seq.), and the Interjurisdictional Fisheries Act (16 U.S.C. 4107 et seq.).

Caritas Christi.

(f) NEW ENGLAND HEALTH PLAN.—The Secretary of Commerce is authorized to provide up to \$2,000,000 from previously appropriated funds to Caritas Christi for the implementation of a health care plan for fishermen in New England if Caritas Christi submits such plan to the Secretary no later than January 1, 1997, and the Secretary, in consultation with the Secretary of Health and Human Services, approves such plan.

SEC. 402. INTERJURISDICTIONAL FISHERIES ACT AMENDMENTS.

(a) REAUTHORIZATION.—Section 308 of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107) is amended—

(1) by amending subsection (a) to read as follows:

“(a) GENERAL APPROPRIATIONS.—There are authorized to be appropriated to the Department of Commerce for apportionment to carry out the purposes of this title—

“(1) \$3,400,000 for fiscal year 1996;

“(2) \$3,900,000 for fiscal year 1997;

“(3) \$4,400,000 for each of the fiscal years 1998, 1999, and 2000.”;

(2) by striking “\$350,000 for each of the fiscal years 1989, 1990, 1991, 1992, and 1993, and \$600,000 for each of the fiscal years 1994 and 1995,” in subsection (c) and inserting “\$700,000 for fiscal year 1997, and \$750,000 for each of the fiscal years 1998, 1999, and 2000,”.

(b) NEW ENGLAND REPORT.—Section 308(d) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(d)) is amended by adding at the end the following new paragraph:

“(7) With respect to funds available for the New England region, the Secretary shall submit to the Congress by January 1, 1997, with annual updates thereafter as appropriate, a report on the New England fishing capacity reduction initiative which provides—

“(A) the total number of Northeast multispecies permits in each permit category and calculates the maximum potential fishing capacity of vessels holding such permits based on the principal gear, gross registered tonnage, engine horsepower, length, age, and other relevant characteristics;

“(B) the total number of days at sea available to the permitted Northeast multispecies fishing fleet and the total

days at sea weighted by the maximum potential fishing capacity of the fleet;

“(C) an analysis of the extent to which the weighted days at sea are used by the active participants in the fishery and of the reduction in such days as a result of the fishing capacity reduction program; and

“(D) an estimate of conservation benefits (such as reduction in fishing mortality) directly attributable to the fishing capacity reduction program.”.

SEC. 403. ANADROMOUS FISHERIES AMENDMENTS.

Section 4 of the Anadromous Fish Conservation Act (16 U.S.C. 757d) is amended to read as follows:

“SEC. 4. (a)(1) There are authorized to be appropriated to carry out the purposes of this Act not to exceed the following sums:

“(A) \$4,000,000 for fiscal year 1997; and

“(B) \$4,250,000 for each of fiscal years 1998, 1999, and 2000.

“(2) Sums appropriated under this subsection are authorized to remain available until expended.

“(b) Not more than \$625,000 of the funds appropriated under this section in any one fiscal year shall be obligated in any one State.”.

Appropriation
authorization.

SEC. 404. ATLANTIC COASTAL FISHERIES AMENDMENTS.

(a) DEFINITION.—Paragraph (1) of section 803 of the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5102) is amended—

(1) by inserting “and” after the semicolon in subparagraph (A);

(2) by striking “States; and” in subparagraph (B) and inserting “States.”; and

(3) by striking subparagraph (C).

(b) IMPLEMENTATION STANDARD FOR FEDERAL REGULATION.—Subparagraph (A) of section 804(b)(1) of such Act (16 U.S.C. 5103(b)(1)) is amended by striking “necessary to support” and inserting “compatible with”.

(c) AMERICAN LOBSTER MANAGEMENT.—Section 809 (16 U.S.C. 5108) and section 810 of such Act are redesignated as sections 811 and 812, respectively, and the following new sections are inserted at the end of section 808:

16 USC 1851
note.

“SEC. 809. STATE PERMITS VALID IN CERTAIN WATERS.

16 USC 5107a.

“(a) PERMITS.—Notwithstanding any provision of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5101 et seq.), or any requirement of a fishery management plan or coastal fishery management plan to the contrary, a person holding a valid license issued by the State of Maine which lawfully permits that person to engage in commercial fishing for American lobster may, with the approval of the State of Maine, engage in commercial fishing for American lobster in the following areas designated as Federal waters, if such fishing is conducted in such waters in accordance with all other applicable Federal and State regulations:

“(1) west of Monhegan Island in the area located north of the line 43° 42′ 08″ N, 69° 34′ 18″ W and 43° 42′ 15″ N, 69° 19′ 18″ W;

“(2) east of Monhegan Island in the area located west of the line 43° 44′ 00″ N, 69° 15′ 05″ W and 43° 48′ 10″ N, 69° 08′ 01″ W;

“(3) south of Vinalhaven in the area located west of the line 43° 52′ 21″ N, 68° 39′ 54″ W and 43° 48′ 10″ N, 69° 08′ 01″ W; and

“(4) south of Bois Bubert Island in the area located north of the line 44° 19′ 15″ N, 67° 49′ 30″ W and 44° 23′ 45″ N, 67° 40′ 33″ W.

“(b) ENFORCEMENT.—The exemption from Federal fishery permitting requirements granted by subsection (a) may be revoked or suspended by the Secretary in accordance with section 308(g) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1858(g)) for violations of such Act or this Act.

16 USC 5107b.

“SEC. 810. TRANSITION TO MANAGEMENT OF AMERICAN LOBSTER FISHERY BY COMMISSION.

Regulations.

“(a) TEMPORARY LIMITS.—Notwithstanding any other provision of this Act or of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), if no regulations have been issued under section 804(b) of this Act by December 31, 1997, to implement a coastal fishery management plan for American lobster, then the Secretary shall issue interim regulations before March 1, 1998, that will prohibit any vessel that takes lobsters in the exclusive economic zone by a method other than pots or traps from landing lobsters (or any parts thereof) at any location within the United States in excess of—

“(1) 100 lobsters (or parts thereof) for each fishing trip of 24 hours or less duration (up to a maximum of 500 lobsters, or parts thereof, during any 5-day period); or

“(2) 500 lobsters (or parts thereof) for a fishing trip of 5 days or longer.

“(b) SECRETARY TO MONITOR LANDINGS.—Before January 1, 1998, the Secretary shall monitor, on a timely basis, landings of American lobster, and, if the Secretary determines that catches from vessels that take lobsters in the exclusive economic zone by a method other than pots or traps have increased significantly, then the Secretary may, consistent with the national standards in section 301 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801), and after opportunity for public comment and consultation with the Atlantic States Marine Fisheries Commission, implement regulations under section 804(b) of this Act that are necessary for the conservation of American lobster.

“(c) REGULATIONS TO REMAIN IN EFFECT UNTIL PLAN IMPLEMENTED.—Regulations issued under subsection (a) or (b) shall remain in effect until the Secretary implements regulations under section 804(b) of this Act to implement a coastal fishery management plan for American lobster.”

16 USC 5108.

“(d) AUTHORIZATION OF APPROPRIATIONS.—Section 810 of such Act, as amended by this Act, is amended further by striking “1996.” and inserting “1996, and \$7,000,000 for each of the fiscal years 1997, 1998, 1999, and 2000.”

SEC. 405. TECHNICAL AMENDMENTS TO MARITIME BOUNDARY AGREEMENT.

Effective date.
16 USC 1802
note.

“(a) EXECUTION OF PRIOR AMENDMENTS TO DEFINITIONS.—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) hereinafter referred to as the “FGB Act”, section 301(b) of that Act (adding a definition of the term “special areas”) shall take effect on the date of enactment of this Act.

(b) CONFORMING AMENDMENTS.—

(1) Section 301(h)(2)(A) of the FGB Act is repealed.

16 USC 1857.

(2) Section 304 of the FGB Act is repealed.

16 USC 1362.

(3) Section 3(15) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(15)) is amended to read as follows:

“(15) The term ‘waters under the jurisdiction of the United States’ means—

“(A) the territorial sea of the United States;

“(B) the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the other boundary 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; and

“(C) 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, 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, except that this subparagraph shall not apply before 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.”.

SEC. 406. AMENDMENTS TO THE FISHERIES ACT.

Section 309(b) of the Fisheries Act of 1995 (Public Law 104-43) is amended by striking “July 1, 1996” and inserting “July 1, 1997”.

16 USC 971c
note.

Approved October 11, 1996.

LEGISLATIVE HISTORY—S. 39 (H.R. 39):

HOUSE REPORTS: No. 104-171 accompanying H.R. 39 (Comm. on Resources).

SENATE REPORTS: No. 104-276 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD, Vol. 142 (1996):

Sept. 18, 19, considered and passed Senate.

Sept. 27, considered and passed House.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 32 (1996):

Oct. 11, Presidential statement.

REGULATORY PLANNING AND REVIEW

The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable. We do not have such a regulatory system today.

With this Executive order, the Federal Government begins a program to reform and make more efficient the regulatory process. The objectives of this Executive order are to enhance planning and coordination with respect to both new and existing regulations; to reaffirm the primacy of Federal agencies in the regulatory decision-making process; to restore the integrity and legitimacy of regulatory review and oversight; and to make the process more accessible and open to the public. In pursuing these objectives, the regulatory process shall be conducted so as to meet applicable statutory requirements and with due regard to the discretion that has been entrusted to the Federal agencies.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Statement of Regulatory Philosophy and Principles. (a) *The Regulatory Philosophy.* Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

(b) *The Principles of Regulation.* To ensure that the agencies' regulatory programs are consistent with the philosophy set forth above, agencies should adhere to the following principles, to the extent permitted by law and where applicable:

(1) Each agency shall identify in writing the specific market failure (such as externalities, market power, lack of information) or other specific problem that it intends to address (including, where applicable, the failures of public institutions) that warrant new agency action, as well as assess the significance of that problem, to enable assessment of whether any new regulation is warranted.

(2) Each agency shall examine whether existing regulations (or other law) have created, or contributed to, the problem that a new regulation is intended to correct and whether those regulations (or other law) should be modified to achieve the intended goal of regulation more effectively.

(3) Each agency shall identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

(4) In setting regulatory priorities, each agency shall consider, to the extent reasonable, the degree and nature of the risks posed by various substances or activities within its jurisdiction.

(5) When an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective. In doing so, each agency shall consider incentives for innovation, consistency, predictability, the costs of enforcement and compliance (to the government, regulated entities, and the public), flexibility, distributive impacts, and equity.

(6) Each agency shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.

(7) Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation or guidance document.

(8) Each agency shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt.

(9) Wherever feasible, agencies shall seek views of appropriate State, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of Federal regulations on State, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives. In addition, as appropriate, agencies shall seek to harmonize Federal regulatory actions with related State, local, and tribal regulatory and other governmental functions.

(10) Each agency shall avoid regulations and guidance documents that are inconsistent, incompatible, or duplicative with its other regulations and guidance documents or those of other Federal agencies.

(11) Each agency shall tailor its regulations and guidance documents to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.

(12) Each agency shall draft its regulations and guidance documents to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.

Sec. 2. Organization. An efficient regulatory planning and review process is vital to ensure that the Federal Government's regulatory system best serves the American people.

(a) *The Agencies.* Because Federal agencies are the repositories of significant substantive expertise and experience, they are responsible for developing regulations and guidance documents and assuring that the regulations and guidance documents are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order.

(b) *The Office of Management and Budget.* Coordinated review of agency rulemaking is necessary to ensure that regulations and guidance documents are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order, and that decisions made by one agency do not conflict with the policies or actions taken or planned by another agency. The Office of Management and Budget (OMB) shall carry out that review function. Within OMB, the Office of Information and Regulatory Affairs (OIRA) is the repository of expertise concerning regulatory issues,

including methodologies and procedures that affect more than one agency, this Executive order, and the President's regulatory policies. To the extent permitted by law, OMB shall provide guidance to agencies and assist the President and regulatory policy advisors to the President in regulatory planning and shall be the entity that reviews individual regulations and guidance documents, as provided by this Executive order.

(c) *Assistance.* In fulfilling his responsibilities under this Executive order, the President shall be assisted by the regulatory policy advisors within the Executive Office of the President and by such agency officials and personnel as the President may, from time to time, consult.

Sec. 3. Definitions. For purposes of this Executive order: (a) "Advisors" refers to such regulatory policy advisors to the President as the President may from time to time consult, including, among others: (1) the Director of OMB; (2) the Chair (or another member) of the Council of Economic Advisers; (3) the Assistant to the President for Economic Policy; (4) the Assistant to the President for Domestic Policy; (5) the Assistant to the President for National Security Affairs; (6) the Director of the Office of Science and Technology Policy; (7) the Deputy Assistant to the President and Director for Intergovernmental Affairs; (8) the Assistant to the President and Staff Secretary; (9) the Assistant to the President and Chief of Staff to the Vice President; (10) the Assistant to the President and Counsel to the President; (11) the Chairman of the Council on Environmental Quality and Director of the Office on Environmental Quality; (12) the Assistant to the President for Homeland Security; and (13) the Administrator of OIRA, who also shall coordinate communications relating to this Executive order among the agencies, OMB, the other Advisors, and the Office of the Vice President.

(b) "Agency," unless otherwise indicated, means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10).

(c) "Director" means the Director of OMB.

(d) "Regulation" means an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency. It does not, however, include:

- (1) Regulations issued in accordance with the formal rulemaking provisions of 5 U.S.C. 556, 557;
- (2) Regulations that pertain to a military or foreign affairs function of the United States, other than procurement regulations and regulations involving the import or export of non-defense articles and services;
- (3) Regulations that are limited to agency organization, management, or personnel matters; or
- (4) Any other category of regulations exempted by the Administrator of OIRA.

(e) "Regulatory action" means any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking.

(f) "Significant regulatory action" means any regulatory action that is likely to result in a regulation that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

(g) "Guidance document" means an agency statement of general applicability and future effect, other than a regulatory action, that sets forth a policy on a statutory, regulatory or technical issue or an interpretation of a statutory or regulatory issue

(h) "Significant guidance document" –

(1) means a guidance document disseminated to regulated entities or the general public that, for purposes of this order, may reasonably be anticipated to:

(A) lead to an annual effect of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(B) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(C) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof; or

(D) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order; and

(2) does not include:

(A) Guidance documents on regulations issued in accordance with the formal rulemaking provisions of 5 U.S.C. 556, 557;

(B) Guidance documents that pertain to a military or foreign affairs function of the United States, other than procurement regulations and regulations involving the import or export of non-defense articles and services;

(C) Guidance documents on regulations that are limited to agency organization, management, or personnel matters; or

(D) Any other category of guidance documents exempted by the Administrator of OIRA.

Sec. 4. Planning Mechanism. In order to have an effective regulatory program, to provide for coordination of regulations, to maximize consultation and the resolution of potential conflicts at an early stage, to involve the public and its State, local, and tribal officials in regulatory planning, and to ensure that new or revised regulations promote the President's priorities and the principles set forth in this Executive order, these procedures shall be followed, to the extent permitted by law:

(a) *Agencies' Policy Meeting.* The Director may convene a meeting of agency heads and other government personnel as appropriate to seek a common understanding of priorities and to coordinate regulatory efforts to be accomplished in the upcoming year.

(b) *Unified Regulatory Agenda.* For purposes of this subsection, the term "agency" or "agencies" shall also include those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10). Each agency shall prepare an agenda of all regulations under development or review, at a time and in a manner specified by the Administrator of OIRA. The description of each regulatory action shall contain, at a minimum, a regulation

identifier number, a brief summary of the action, the legal authority for the action, any legal deadline for the action, and the name and telephone number of a knowledgeable agency official. Agencies may incorporate the information required under 5 U.S.C. 602 and 41 U.S.C. 402 into these agendas.

(c) *The Regulatory Plan.* For purposes of this subsection, the term “agency” or “agencies” shall also include those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10). (1) As part of the Unified Regulatory Agenda, beginning in 1994, each agency shall prepare a Regulatory Plan (Plan) of the most important significant regulatory actions that the agency reasonably expects to issue in proposed or final form in that fiscal year or thereafter. Unless specifically authorized by the head of the agency, no rulemaking shall commence nor be included on the Plan without the approval of the agency’s Regulatory Policy Officer, and the Plan shall contain at a minimum:

(A) A statement of the agency’s regulatory objectives and priorities and how they relate to the President’s priorities;

(B) A summary of each planned significant regulatory action including, to the extent possible, alternatives to be considered and preliminary estimates of the anticipated costs and benefits of each rule as well as the agency’s best estimate of the combined aggregate costs and benefits of all its regulations planned for that calendar year to assist with the identification of priorities;

(C) A summary of the legal basis for each such action, including whether any aspect of the action is required by statute or court order, and specific citation to such statute, order, or other legal authority;

(D) A statement of the need for each such action and, if applicable, how the action will reduce risks to public health, safety, or the environment, as well as how the magnitude of the risk addressed by the action relates to other risks within the jurisdiction of the agency;

(E) The agency’s schedule for action, including a statement of any applicable statutory or judicial deadlines; and

(F) The name, address, and telephone number of a person the public may contact for additional information about the planned regulatory action.

(2) Each agency shall forward its Plan to OIRA by June 1 st of each year.

(3) Within 10 calendar days after OIRA has received an agency’s Plan, OIRA shall circulate it to other affected agencies and the Advisors.

(4) An agency head who believes that a planned regulatory action of another agency may conflict with its own policy or action taken or planned shall promptly notify, in writing, the Administrator of OIRA, who shall forward that communication to the issuing agency and the Advisors.

(5) If the Administrator of OIRA believes that a planned regulatory action of an agency may be inconsistent with the President’s priorities or the principles set forth in this Executive order or may be in conflict with any policy or action taken or planned by another agency, the Administrator of OIRA shall promptly notify, in writing, the affected agencies and the Advisors.

(6) The Director may consult with the heads of agencies with respect to their Plans and, in appropriate instances, request further consideration or inter-agency coordination.

(7) The Plans developed by the issuing agency shall be published annually in the October publication of the Unified Regulatory Agenda. This publication shall be made available to the Congress; State, local, and tribal governments; and the public. Any views on any aspect of any agency Plan, including whether any planned regulatory action might conflict with any other planned or existing regulation, impose any unintended consequences on the public, or confer any unclaimed benefits on the public, should be directed to the issuing agency, with a copy to OIRA.

(d) *Regulatory Working Group.* Within 30 days of the date of this Executive order, the Administrator of OIRA shall convene a Regulatory Working Group (“Working Group”), which shall consist of representatives of the heads of each agency that the Administrator determines to have significant domestic regulatory responsibility and the Advisors. The Administrator of OIRA shall chair the Working Group and shall periodically advise the Director on the activities of the Working Group. The Working Group shall serve as a forum to assist agencies in identifying and analyzing important regulatory issues (including, among others (1) the development of innovative regulatory techniques, (2) the methods, efficacy, and utility of comparative risk assessment in regulatory decision-making, and (3) the development of short forms and other streamlined regulatory approaches for small businesses and other entities). The Working Group shall meet at least quarterly and may meet as a whole or in subgroups of agencies with an interest in particular issues or subject areas. To inform its discussions, the Working Group may commission analytical studies and reports by OIRA, the Administrative Conference of the United States, or any other agency.

(e) *Conferences.* The Administrator of OIRA shall meet quarterly with representatives of State, local, and tribal governments to identify both existing and proposed regulations that may uniquely or significantly affect those governmental entities. The Administrator of OIRA shall also convene, from time to time, conferences with representatives of businesses, nongovernmental organizations, and the public to discuss regulatory issues of common concern.

Sec. 5. Existing Regulations. In order to reduce the regulatory burden on the American people, their families, their communities, their State, local, and tribal governments, and their industries; to determine whether regulations promulgated by the executive branch of the Federal Government have become unjustified or unnecessary as a result of changed circumstances; to confirm that regulations are both compatible with each other and not duplicative or inappropriately burdensome in the aggregate; to ensure that all regulations are consistent with the President’s priorities and the principles set forth in this Executive order, within applicable law; and to otherwise improve the effectiveness of existing regulations: (a) Within 90 days of the date of this Executive order, each agency shall submit to OIRA a program, consistent with its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified or eliminated so as to make the agency’s regulatory program more effective in achieving the regulatory objectives, less burdensome, or in greater alignment with the President’s priorities and the principles set forth in this Executive order. Any significant regulations selected for review shall be included in the agency’s annual Plan. The agency shall also identify any legislative mandates that require the agency to promulgate or continue to impose regulations that the agency believes are unnecessary or outdated by reason of changed circumstances.

(b) The Administrator of OIRA shall work with the Regulatory Working Group and other interested entities to pursue the objectives of this section. State, local, and tribal governments are specifically encouraged to assist in the identification of regulations that impose significant or unique burdens on those governmental entities and that appear to have outlived their justification or be otherwise inconsistent with the public interest.

(c) The Director, in consultation with the Advisors, may identify for review by the appropriate agency or agencies other existing regulations of an agency or groups of regulations of more than one agency that affect a particular group, industry, or sector of the economy, or may identify legislative mandates that may be appropriate for reconsideration by the Congress.

Sec. 6. Centralized Review of Regulations. The guidelines set forth below shall apply to all regulatory actions, for both new and existing regulations, by agencies other than those agencies specifically exempted by the Administrator of OIRA:

(a) *Agency Responsibilities.* (1) Each agency shall (consistent with its own rules, regulations, or procedures) provide the public with meaningful participation in the regulatory process. In particular, before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation (including, specifically, State, local, and tribal officials). In addition, each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days. In consultation with OIRA, each agency may also consider whether to utilize formal rulemaking

procedures under 5 U.S.C. 556 and 557 for the resolution of complex determinations. Each agency also is directed to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

(2) Within 60 days of the date of this Executive order, each agency head shall designate one of the agency's Presidential Appointees to be its Regulatory Policy Officer, advise OMB of such designation, and annually update OMB on the status of this designation. The Regulatory Policy Officer shall be involved at each stage of the regulatory process to foster the development of effective, innovative, and least burdensome regulations and to further the principles set forth in this Executive order.

(3) In addition to adhering to its own rules and procedures and to the requirements of the Administrative Procedure Act, the Regulatory Flexibility Act, the Paperwork Reduction Act, and other applicable law, each agency shall develop its regulatory actions in a timely fashion and adhere to the following procedures with respect to a regulatory action:

(A) Each agency shall provide OIRA, at such times and in the manner specified by the Administrator of OIRA, with a list of its planned regulatory actions, indicating those which the agency believes are significant regulatory actions within the meaning of this Executive order. Absent a material change in the development of the planned regulatory action, those not designated as significant will not be subject to review under this section unless, within 10 working days of receipt of the list, the Administrator of OIRA notifies the agency that OIRA has determined that a planned regulation is a significant regulatory action within the meaning of this Executive order. The Administrator of OIRA may waive review of any planned regulatory action designated by the agency as significant, in which case the agency need not further comply with subsection (a)(3)(B) or subsection (a)(3)(C) of this section.

(B) For each matter identified as, or determined by the Administrator of OIRA to be, a significant regulatory action, the issuing agency shall provide to OIRA:

(i) The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need; and

(ii) An assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions.

(C) For those matters identified as, or determined by the Administrator of OIRA to be, a significant regulatory action within the scope of section 3(f)(1), the agency shall also provide to OIRA the following additional information developed as part of the agency's decision-making process (unless prohibited by law):

(i) An assessment, including the underlying analysis, of benefits anticipated from the regulatory action (such as, but not limited to, the promotion of the efficient functioning of the economy and private markets, the enhancement of health and safety, the protection of the natural environment, and the elimination or reduction of discrimination or bias) together with, to the extent feasible, a quantification of those benefits;

(ii) An assessment, including the underlying analysis, of costs anticipated from the regulatory action (such as, but not limited to, the direct cost both to the government in administering the regulation and to businesses and others in complying with the regulation, and any adverse effects on the efficient functioning of the economy, private markets (including productivity, employment, and competitiveness), health, safety, and the natural environment), together with, to the extent feasible, a quantification of those costs; and (iii) An assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, identified by the agencies or the public (including improving the current regulation and reasonably viable nonregulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives.

(D) In emergency situations or when an agency is obligated by law to act more quickly than normal review procedures allow, the agency shall notify OIRA as soon as possible and, to the extent practicable, comply with subsections (a)(3)(B) and (C) of this section. For those regulatory actions that are governed by a statutory or court-imposed deadline, the agency shall, to the extent practicable, schedule rulemaking proceedings so as to permit sufficient time for OIRA to conduct its review, as set forth below in subsection (b)(2) through (4) of this section.

(E) After the regulatory action has been published in the Federal Register or otherwise issued to the public, the agency shall:

(i) Make available to the public the information set forth in subsections (a)(3)(B) and (C);

(ii) Identify for the public, in a complete, clear, and simple manner, the substantive changes between the draft submitted to OIRA for review and the action subsequently announced; and

(iii) Identify for the public those changes in the regulatory action that were made at the suggestion or recommendation of OIRA.

(F) All information provided to the public by the agency shall be in plain, understandable language.

(b) *OIRA Responsibilities.* The Administrator of OIRA shall provide meaningful guidance and oversight so that each agency's regulatory actions are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order and do not conflict with the policies or actions of another agency. OIRA shall, to the extent permitted by law, adhere to the following guidelines:

(1) OIRA may review only actions identified by the agency or by OIRA as significant regulatory actions under subsection (a)(3)(A) of this section.

(2) OIRA shall waive review or notify the agency in writing of the results of its review within the following time periods:

(A) For any notices of inquiry, advance notices of proposed rulemaking, or other preliminary regulatory actions prior to a Notice of Proposed Rulemaking, within 10 working days after the date of submission of the draft action to OIRA;

(B) For all other regulatory actions, within 90 calendar days after the date of submission of the information set forth in subsections (a)(3)(B) and (C) of this section, unless OIRA has previously reviewed this information and, since that review, there has been no material change in the facts and circumstances upon which the regulatory action is based, in which case, OIRA shall complete its review within 45 days; and

(C) The review process may be extended (1) once by no more than 30 calendar days upon the written approval of the Director and (2) at the request of the agency head.

(3) For each regulatory action that the Administrator of OIRA returns to an agency for further consideration of some or all of its provisions, the Administrator of OIRA shall provide the issuing agency a written explanation for such return, setting forth the pertinent provision of this Executive order on which OIRA is relying. If the agency head disagrees with some or all of the bases for the return, the agency head shall so inform the Administrator of OIRA in writing.

(4) Except as otherwise provided by law or required by a Court, in order to ensure greater openness, accessibility, and accountability in the regulatory review process, OIRA shall be governed by the following disclosure requirements:

(A) Only the Administrator of OIRA (or a particular designee) shall receive oral communications initiated by persons not employed by the

executive branch of the Federal Government regarding the substance of a regulatory action under OIRA review;

(B) All substantive communications between OIRA personnel and persons not employed by the executive branch of the Federal Government regarding a regulatory action under review shall be governed by the following guidelines: (i) A representative from the issuing agency shall be invited to any meeting between OIRA personnel and such person(s);

(ii) OIRA shall forward to the issuing agency, within 10 working days of receipt of the communication(s), all written communications, regardless of format, between OIRA personnel and any person who is not employed by the executive branch of the Federal Government, and the dates and names of individuals involved in all substantive oral communications (including meetings to which an agency representative was invited, but did not attend, and telephone conversations between OIRA personnel and any such persons); and

(iii) OIRA shall publicly disclose relevant information about such communication(s), as set forth below in subsection (b)(4)(C) of this section.

(C) OIRA shall maintain a publicly available log that shall contain, at a minimum, the following information pertinent to regulatory actions under review:

(i) The status of all regulatory actions, including if (and if so, when and by whom) Presidential consideration was requested;

(ii) A notation of all written communications forwarded to an issuing agency under subsection (b)(4)(B)(ii) of this section; and

(iii) The dates and names of individuals involved in all substantive oral communications, including meetings and telephone conversations, between OIRA personnel and any person not employed by the executive branch of the Federal Government, and the subject matter discussed during such communications.

(D) After the regulatory action has been published in the **Federal Register** or otherwise issued to the public, or after the agency has announced its decision not to publish or issue the regulatory action, OIRA shall make available to the public all documents exchanged between OIRA and the agency during the review by OIRA under this section.

(5) All information provided to the public by OIRA shall be in plain, understandable language.

Sec. 7. Resolution of Conflicts. (a) To the extent permitted by law, disagreements or conflicts between or among agency heads or between OMB and any agency that cannot be resolved by the Administrator of OIRA shall be resolved by the President, with the assistance of the Chief of Staff to the President ("Chief of Staff"), acting at the request of the President, with the relevant agency head (and, as appropriate, other interested government officials). Presidential consideration of such disagreements may be initiated only by the Director, by the head of the issuing agency, or by the head of an agency that has a significant interest in the regulatory action at issue. Such review will not be undertaken at the request of other persons, entities, or their agents.

(b) Resolution of such conflicts shall be informed by recommendations developed by the Chief of Staff, after consultation with the Advisors (and other executive branch officials or personnel whose responsibilities to the President include the subject matter at issue). The development of these recommendations shall be concluded within 60 days after review has been requested.

(c) During the Presidential review period, communications with any person not employed by the Federal Government relating to the substance of the regulatory action under review and directed to the Advisors or their staffs or to the staff of the Chief of Staff shall be in writing and shall be forwarded by the recipient to the affected agency(ies) for inclusion in the public docket(s). When the communication is not in writing, such Advisors or staff members shall inform the outside party that the matter is under review and that any comments should be submitted in writing.

(d) At the end of this review process, the President, or the Chief of Staff acting at the request of the President, shall notify the affected agency and the Administrator of OIRA of the President's decision with respect to the matter.

Sec. 8. Publication. Except to the extent required by law, an agency shall not publish in the **Federal Register** or otherwise issue to the public any regulatory action that is subject to review under section 6 of this Executive order until (1) the Administrator of OIRA notifies the agency that OIRA has waived its review of the action or has completed its review without any requests for further consideration, or (2) the applicable time period in section 6(b)(2) expires without OIRA having notified the agency that it is returning the regulatory action for further consideration under section 6(b)(3), whichever occurs first. If the terms of the preceding sentence have not been satisfied and an agency wants to publish or otherwise issue a regulatory action, the head of that agency may request Presidential consideration through the Director, as provided under section 7 of this order. Upon receipt of this request, the Director shall notify OIRA and the Advisors. The guidelines and time period set forth in section 7 shall apply to the publication of regulatory actions for which Presidential consideration has been sought.

Sec. 9. Significant Guidance Documents. Each agency shall provide OIRA, at such times and in the manner specified by the Administrator of OIRA, with advance notification of any significant guidance documents. Each agency shall take such steps as are necessary for its Regulatory Policy Officer to ensure the agency's compliance with the requirements of this section. Upon the request of the Administrator, for each matter identified as, or determined by the Administrator to be, a significant guidance document, the issuing agency shall provide to OIRA the content of the draft guidance document, together with a brief explanation of the need for the guidance document and how it will meet that need. The OIRA Administrator shall notify the agency when additional consultation will be required before issuance of the significant guidance document.

Sec. 10. Preservation of Agency Authority. Nothing in this order shall be construed to impair or otherwise affect the authority vested by law in an agency or the head thereof, including the authority of the Attorney General relating to litigation.

Sec. 11. Judicial Review. Nothing in this Executive order shall affect any otherwise available judicial review of agency action. This Executive order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 12. Revocations. Executive Orders Nos. 12291 and 12498; all amendments to those Executive orders; all guidelines issued under those orders; and any exemptions from those orders heretofore granted for any category of rule are revoked.

New Priorities for the 21st Century

National Marine Fisheries Service Strategic Plan

Updated for

FY 2005 – FY 2010

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

Message from the Assistant Administrator for Fisheries

Americans depend on our Nation's living marine resources for food, jobs, recreation, tourism, medicine, and a myriad of industrial and commercial products. More and more they recognize the importance and value of healthy marine ecosystems to our environment and quality of life. We all have high expectations that public policies will ensure the health and longevity of these resources. However, we are at a crossroads in the care and use of our living marine resources. At no point in history has greater economic, political, and public interest been focused on the use and protection of these resources.

The National Oceanic and Atmospheric Administration (NOAA) has recognized the importance of these circumstances in its Strategic Plan by setting a goal to "protect, restore, and manage the use of coastal and ocean resources through an ecosystem approach to management." The National Marine Fisheries Service (NMFS) has stepped up to this challenge by providing in its Strategic Plan an integrated ecosystem approach to the stewardship of these resources.

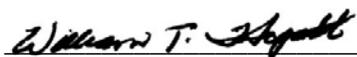
The NMFS Strategic Plan provides a look into a future of ecosystem approaches to management, rebuilding and sustaining fishery and protected species stocks to their long-term potential. This will help ensure future performance, productivity, and biological diversity of marine ecosystems for the greatest benefit to the Nation.

The NMFS Strategic Plan is an important link between budget and performance. It is a critical tool to steer us in the direction of ecosystem approaches to management and to help us design and create programs, allocate resources, and perform with better accountability for results.

Over the next five years, NMFS will lead through NOAA's Ecosystem Goal Team the design and development of new programs and approaches to address longstanding barriers to reducing overcapacity and rebuilding overfished fisheries. We will simultaneously improve the quality, scope, and effectiveness of our stewardship activities for protected species and habitat conservation. We propose changes to our management programs to accomplish these objectives in a scientifically credible and integrated manner, taking account of all uses of our living marine resources.

No successful, societal response to environmental or ecological stress, however, has ever been accomplished by a single agency or organization. Success requires the interaction, cooperation, and feedback that come only when all parties involved work together to achieve these goals. The delicate balance of achieving multiple objectives to produce the greatest benefits requires extensive collaboration with our NOAA, Federal, international, state, local, tribal, and non-governmental organization partners, as well as the public. In addition, we will need to develop new partners and relationships as we move toward ecosystem approaches to management.

I am committed to an open and transparent NMFS that will continue to expand existing partnerships and collaboration as well as to welcome our new partners in this endeavor.



William T. Hogarth, Ph.D.
Assistant Administrator for Fisheries

VISION

American people enjoying the riches and benefits of healthy and diverse marine ecosystems

MISSION

Stewardship of living marine resources through science-based conservation and management, and the protection and restoration of healthy ecosystems

RESPONSIBILITIES

NOAA's National Marine Fisheries Service (NMFS) is responsible for stewardship of the Nation's living marine resources and their habitats within the United States Exclusive Economic Zone. We work to conserve, protect, and manage these resources to ensure their continuation as functioning components of ecosystems, while also affording economic opportunities and enhancing the quality of life for the American public. Our mandates and authorities are derived from numerous statutes, most significantly the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), the Endangered Species Act (ESA), and the Marine Mammal Protection Act (MMPA). All these activities are encompassed by NOAA's mission "to understand and predict changes in Earth's environment and conserve and manage coastal and marine resources to meet our Nation's economic, social, and environmental needs."

Most of NMFS's programmatic activities support achieving NOAA's strategic goal to "protect, restore, and manage the use of coastal and ocean resources through an ecosystem approach to management." NMFS activities also support NOAA's goal to "understand climate variability and change to enhance society's ability to plan and respond." Finally, NMFS provides agency-wide services to "provide critical support mission for NOAA's mission." NMFS does not participate in any programs under NOAA's other goals to "service society's needs for weather and water information" or to "support the nation's commerce with information for safe, efficient, and environmentally sound transportation."

NMFS employs more than 2,500 people across the country in our six regional offices and science centers as well as in our headquarters in Silver Spring, Maryland. In implementing our stewardship activities, we work closely with our partners in state and other Federal agencies, local and tribal governments, industry, academia, and non-governmental organizations (NGOs). We also work closely with the other NOAA line offices. Of the nine NOAA programs in which we participate, seven involve at least one other line office. We work with the National Ocean Service (NOS) on habitat protection and restoration and coral reef conservation, as well as other activities. We work with Oceanic and Atmospheric Research (OAR) on ecosystem research, coral reef conservation, and understanding climate effects on ecosystems, among other efforts. We also work with the National Environmental Satellite Data Information Service (NESDIS) to provide GIS maps of habitat for trust species and with the National Weather Service (NWS) on using NOAA Weather Radio to publicize fishery closures.

NOAA's Strategic Plan identifies goals and high-level outcomes, strategies, and performance objectives and measures to achieve NOAA's vision of "an informed society that uses a comprehensive understanding of the role of the oceans, coasts, and atmosphere in the global ecosystem to make the best social and economic decisions." This NMFS Strategic Plan describes the programs executed wholly or in part by NMFS as they relate and contribute to NOAA mission goals, outcomes, and strategies. The specific contributions of NMFS activities to the NOAA programs in the ecosystem, climate, and mission support goals are described in the following sections.

NOAA Mission Goal: Protect, Restore, and Manage the Use of Coastal and Ocean Resources Through an Ecosystem Approach to Management

NMFS is the lead federal agency in protecting, restoring, and managing living marine resources and their ecosystems. To balance economic, social, and environmental needs, we take an ecosystem approach to management. This approach strives to integrate all concerns, priorities, and expertise in the management of coastal and marine resources.

NOAA Outcomes	NOAA Strategies	NOAA Programs Executed Wholly or in Part by NMFS
Healthy and productive coastal and marine ecosystems that benefit society	Engage and collaborate with our partners to achieve regional objectives by delineating regional ecosystems, promoting partnerships at the ecosystem level, and implementing cooperative strategies to improve regional ecosystem health.	<i>Ecosystem Observations</i>
	Manage uses of ecosystems by applying scientifically sound observations, assessments, and research findings to ensure the sustainable use of resources and to balance competing uses of coastal and marine ecosystems.	<i>Ecosystem Research</i>
A well-informed public that acts as a steward of coastal and marine ecosystems	Improve resource management by advancing our understanding of ecosystems through better simulation and predictive models. Build and advance the capabilities of an ecological component of the NOAA global environmental observing system to monitor, assess, and predict national and regional ecosystem health, as well as to gather information consistent with established social and economic indicators.	Fisheries Management Protected Species
	Develop coordinated regional and national outreach and education efforts to improve public understanding and involvement in stewardship of coastal and marine ecosystems.	<i>Enforcement</i> <i>Habitat</i>
	Engage in technological and scientific exchange with our domestic and international partners to protect, restore, and manage marine resources within and beyond the Nation's borders.	<i>Coral Reef Conservation</i> <i>Aquaculture</i>

Italics represent programs in which other NOAA line offices participate.

NMFS's stewardship activities under this goal support NOAA performance objectives to

- Increase number of fish stocks managed at sustainable levels
- Increase number of protected species that reach stable or increasing population levels
- Increase number of regional coastal and marine ecosystems delineated with approved indicators of ecological health and socio-economic benefits that are monitored and understood
- Increase number of habitat acres conserved or restored
- Increase portion of population that is knowledgeable of and acting as stewards for coastal and marine ecosystem issues.

Nearly all NMFS activities fall under the Ecosystem Goal and provide over half the resources devoted to it. NMFS's contributions to these programs are described in the following sections.

Ecosystem Observations

Ecosystem Observations (EOP) is a matrix program led by NMFS in partnership with OAR and NOS that collects, manages, stores, and disseminates data on the status of living marine resources and their environment to provide managers with information to make informed decisions. The EOP is an “end-to-end” coastal and oceanic ecological observing system that is a component of the Integrated Ocean Observing System (IOOS). EOP’s activities include routine living marine resource surveys and monitoring, assessments and forecasts (including economic and sociocultural aspects), and research to improve the technical capability of the observation system. The EOP has collaborative linkages within NOAA as well as with non-NOAA stakeholders, including the fishing industry and academic and NGO communities.

Over 95% of EOP budget and activities reside within NMFS. NMFS’s observations provide routine, timely, and scientifically valid information on NOAA’s trust species. There are eight major components:

- Living marine resource surveys
- Ecosystem surveys
- Protected resource surveys
- Observer programs
- Habitat assessments
- Commercial fisheries statistics
- Marine recreational fisheries statistics
- Economic and sociocultural surveys.

We also perform corresponding data management, analysis, education, and outreach.

Over the next five years we will:

- Deliver comprehensive and timely catch information from web-enabled databases
- Provide abundance and biological data for all managed stocks
- Improve major stock assessment precision and minor stock baseline assessments
- Improve and extend model forecasts with environmental and ecosystem data
- Deliver comprehensive and timely stock assessments for all protected species
- Increase survey and assessment efforts for high-priority protected species, such as those with known high levels of interactions with commercial fisheries or those that are endangered and need close monitoring
- Improve monitoring and assessments of ecosystems to provide routine forecasts on the effects of human activities, changes in the physical and chemical environment (e.g., seasonal short-term and long-term climate change), and interactions among biological resource communities and their habitats
- Conduct mandated economic and sociocultural monitoring, assessment, and analysis
- Increase our ability to conduct community profiles, evaluate protected species, and analyze the impacts of marine protected areas.

To attain this full capability, we will invest in advanced technologies and research to elucidate environmental and ecosystem factors that most influence managed stocks. Our data stewardship capabilities will respond to improvements in fishery, protected resource, ecosystem, economic, and sociocultural monitoring and assessments to provide scientifically reliable and timely information to managers, the public, and other NOAA constituents.

Ecosystem Research

Ecosystem Research (ERP) is a matrix program led by OAR and including NOS that provides research results and tools for ecosystem management to NOAA and coastal stakeholders. ERP develops the models, tools, and techniques for ecosystem assessments and forecasts and conducts research to improve understanding of natural and anthropogenic factors that affect ecosystems. ERP is organized into five program components:

- Evaluation and understanding of the state of coastal ecosystems
- Development of ecosystem management support tools
- Technology development for coastal and ocean resources
- Ocean exploration
- Capacity building and effective knowledge transfer.

Approximately 25% of ERP budget and activities reside within NMFS, and all of the NMFS funds within ERP are devoted to protected species research. Currently this research focuses primarily on Steller Sea Lion and Pacific Salmon recovery. However, in the next five years research efforts will be expanded to further develop the next generation of stock assessments for protected species, known in our Stock Assessment Improvement Plan as “Tier III.”

Tier III research will improve capabilities for ecosystem-based assessments, including research, expanded monitoring, and development of new models to better predict spatial and temporal changes in populations and the impact of human activities on protected species. Tier III assessments will incorporate information on

- Behavior and physiology
- Multispecies interactions
- Linkages to oceanographic processes
- Food-web dynamics
- Population effects of sub-lethal natural and human impacts
- Market and non-market valuation
- Economic and sociocultural systems
- Biotoxins, pollutants, disease, and pathogens to address health of protected species and marine mammals as indicator species of environmental and human health.

Tier III assessments will ensure management decisions are based on the best available information, increasing the likelihood of achieving conservation mandates while reducing conflict and litigation and minimizing economic impacts. Their primary focus at this early stage will be on expanding knowledge of marine animal health and the effects of noise on marine mammals. However, they will also include partnering with other agencies and academia to integrate ecosystem considerations into existing research programs, develop future plans and priorities for research, and mine existing data sources to conduct ecosystem-level research.

Fisheries Management

Management of Federal fishery resources is entrusted to NMFS under numerous laws, treaties, and other mandates. We work to ensure that fisheries are maintained at productive levels to support sustainable fisheries and the ecosystems of which they are a part.

We work with the eight Regional Fishery Management Councils to end overfishing, reduce bycatch, conserve essential fish habitat, and rebuild depleted stocks through the development of fishery management plans and associated regulations. The Councils recommend management plans and amendments and we approve these management programs and implement and enforce needed regulations. Toward this end, we:

- Develop analytical documents to support rulemaking in concert with the Councils
- In coordination with the Councils, set new policies and revise existing policy on fishery management and economic and sociocultural issues
- Work with the Councils to set policy regarding the operation and administration of the Councils and appointment of Council members
- Seek improvements in fishing fleet and shoreside processing operations and, with the Councils, reductions in overcapacity in fisheries
- Manage a voluntary seafood inspection service to ensure compliance with all applicable food regulations
- Participate in negotiations of international agreements
- Support U.S. participation in regional fisheries management organizations and bilateral consultations
- Work to secure equitable fishing and trade opportunities for U.S. fishermen
- Manage foreign fishing permitting programs.

To ensure effective management of stocks throughout their range, we maintain cooperative partnerships with three Interstate Marine Fisheries Commissions, all coastal states, and five island territories and/or commonwealths. We also maintain liaisons with other nations on fisheries matters.

To meet our future goals, we will implement a number of strategies in the coming years. Our short- and mid-term strategies to ensure productive fisheries in the future are to

- Implement fully a regulatory quality improvement program
- Strengthen coordination of marine fisheries management and conservation between state and federal levels
- Increase opportunities for industry to improve economic performance
- Following input from the Councils and other stakeholders, issue guidance for ecosystem approaches to management
- Increase public understanding of our stewardship role
- Coordinate with the Councils and other stakeholders to recover all overfished stocks under effective rebuilding plans
- Implement the forthcoming Recreational Fisheries Strategic Plan.

Over the long term, we will seek to ensure that ecosystem approaches to management are applied in the conservation and management of federal, state, and international fisheries; that the public promotes stewardship of marine fisheries; and that fish stocks are maintained at productive levels to support sustainable fisheries and ecosystems.

Protected Species

The Protected Species Program (PSP) protects and recovers species through planning, regulation, partnerships, direct action, and outreach and education both domestically and internationally. NMFS is the lead federal agency for protecting and recovering marine and anadromous species under the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA). As such, the PSP falls entirely under our jurisdiction. Activities include

- Developing conservation actions for species approaching threatened or depleted status
- Listing species in need of protection under the ESA and categorizing stocks of marine mammals for levels of protection that will provide for future recovery
- Developing and implementing recovery and conservation activities
- Responding to stranding events and conducting a marine animal health program
- Developing publications and presentations and interacting in public forums for the purpose of outreach and education
- Preparing U.S. positions on issues and initiatives for international meetings
- Funding international conservation actions
- Transferring technology to international partners.

Over the next five years, our highest priority focus will be to stabilize or increase protected species populations and put ESA-listed species and depleted marine mammal populations on the road to recovery. This effort will require us to

- Complete required recovery, conservation, and take reduction plans
- Carry out recovery and conservation actions through partnerships
- Reduce the interactions of fisheries with protected species
- Achieve efficiencies in ESA section 7 consultations and ESA and MMPA permitting
- Implement proactive conservation efforts before species need to be listed under the ESA
- Improve education efforts.

While the main focus will be on issues that can be addressed domestically, we will expand international efforts to achieve recovery of species that spend a significant portion of their life cycle in international waters.

Over 60% of current funding is directed at funding partnership conservation, recovery, and co-management actions with coastal states, American Indian tribes, Alaska Natives, NGOs, universities, and various private entities. These partnership efforts will continue to leverage additional resources for conservation and are critical to achieving recovery of species.

We will strengthen partnerships internally through

- Development of joint conservation programs with the Coastal and Marine Resource Management program (National Marine Sanctuaries)
- Improvement of protected species data collection through the EOP
- Improvement of protected species research through the ERP.

The data collected, analyzed, and synthesized through the EOP and the research conducted through the ERP provide scientific information necessary for the implementation of sound and successful management strategies. Better information leads to management that is consistent with the nature of the problem and allows us to reach conservation goals while also reducing the risk of costly economic and sociocultural impacts.

Enforcement

Enforcement is a matrix program led by NMFS in partnership with NOS that provides services to ensure compliance with measures enacted to protect, restore, and manage coastal and marine resources. These services are delivered through the NMFS Office for Law Enforcement (OLE), a professional, accredited law enforcement agency. The Enforcement mission includes the provision of services through strategies that include investigations, patrol and inspections, and outreach and education.

Investigations are conducted by over 140 special agents stationed throughout the coastal region of the U.S. states and territories. Agents investigate both civil and criminal violations and may be responsible for up to 30 investigations each annually, depending on the scope, complexity, and disposition of the case. The duration and scope of cases may range from only a few hours to several years.

NMFS also uses extensive patrol and inspection systems. We employ only 17 uniformed enforcement officers, most of whom are assigned to monitor the Individual Fishing Quota (IFQ) system in Alaska. However, we hold cooperative enforcement agreements to provide thousands of hours in patrol and inspections services in nearly every U.S. coastal state and several territories. We now hold such agreements with 21 coastal states and three U.S. territories; they place over 2,000 state resource officers at our potential disposal. In addition to patrol services, automated surveillance is provided through the use of vessel monitoring systems, which currently monitor over 2,200 vessels. These services and systems also contribute to homeland security. Through OLE, NMFS participates in a broad array of homeland security initiatives, including the FBI's Joint Terrorism Task Forces.

We also use outreach and education to elicit voluntary compliance with resource protection measures. We have had great success with voluntary compliance: Most citizens who are familiar with such measures and who understand the potential harm from violating them respect the resources and comply. Outreach and education through classroom sessions, literature distribution, sign placement, discussions with industry, and the facilitation of partnerships with volunteer, governmental, and non-governmental groups are an investment in the future as people learn the importance of conservation.

Over the next five years, we will use the strategies described below to provide the enforcement services that support the expanding level of fisheries management plans, listed and protected species, import/export controls, international conventions and treaties, observer programs, and other responsibilities within our mission.

- Investigations – We will pursue an enhancement of investigative services through the advancement and implementation of computer and financial forensics, the application of advanced computer analysis, and the facilitation of international cooperation.
- Patrol, Monitoring and Inspections – We will pursue the advancement and expansion of strategies that serve as force multipliers in the areas of partnerships and use of technology through our “flagship” programs of State Cooperative Enforcement and Vessel Monitoring.
- Outreach and Education – We will pursue and implement expanded strategies that include non-traditional enforcement measures that facilitate cooperation, problem resolution, and compliance through use of the media, volunteer organizations, schools, industry, and the public.

Habitat

Habitat is a matrix program comprising activities from OAR, NOS, and NMFS that protects and restores coastal, marine, and Great Lakes habitats. The program plans, funds, and implements habitat protection and restoration projects; advances habitat science; provides technical information and conservation recommendations; and involves coastal communities, NGOs, and states in partnerships to protect and restore habitats and encourage stewardship of NOAA trust resources.

NMFS's habitat protection activities seek to avoid and minimize adverse impacts to living marine resource habitats. Many of these activities are implemented in close cooperation with NOS (dredging, natural resource damage claims, energy development implications), OAR (research initiatives), and NESDIS (environmental data layers, GIS products, IT support). They include:

- Reviewing and responding to proposals to develop or otherwise alter key habitats
- Improving diadromous fish access to historic habitats through dam removal and fish passage
- Developing and analyzing measures to reduce adverse fishing effects on essential fish habitat
- Working with stakeholders to develop ecosystem management plans
- Developing policies that improve regulation and management of habitat impacts.

NMFS participates in regional and national habitat restoration programs. We direct restoration planning, implementation, and monitoring for the Community-based Restoration Program, which undertook over 800 projects between 1996 and 2004. We serve as the Commerce Department representative to the Coastal Wetlands Planning, Protection and Restoration Act Task Force, which undertakes large-scale habitat restoration and protection in coastal Louisiana. We also serve as the primary source of restoration expertise for the Damage Assessment and Restoration Program. With NOS and the General Counsel's Office, we address the effects of oil spills, releases of toxic compounds, and ship groundings.

Over the next five years, we aim to expand our capabilities to implement large-scale protection and restoration initiatives through a place-based approach with a specific focus on urban estuaries. We will seek a leadership role among stakeholders and industry sectors, leverage protection and restoration efforts, and provide technical guidance (e.g., economics, bioeconomic modeling, and GIS technologies) to improve decision-making based on a foundation of science.

We will strive to

- Improve the general understanding of habitat functions and threats by assessing and conducting habitat analyses
- Develop models that enhance forecasting capabilities
- Establish priorities for habitat protection and restoration
- Monitor and evaluate restoration techniques
- Develop tools and methods to track success.

NMFS will expand efforts to infuse the best available information into policies, guidelines, models, and decisions that affect trust resources. We will pursue research partnerships to fill priority gaps in management plans and ecosystem approaches. We will implement an ecosystem approach to management that involves partners and stakeholders to protect and restore habitats that contribute to sustaining populations of fishery resources, and that reduces anthropogenic impacts on our Nation's coastal and marine resources.

Coral Reef Conservation

Coral reefs are the most diverse components of marine ecosystems—and among the most threatened. The NOAA Coral Reef Conservation Matrix Program, led by NOS, supports science and management to preserve, sustain, and restore coral reefs. NOAA has management responsibility for coral reefs in Federal waters and National Marine Sanctuaries. Activities include

- Implementing the Coral Reef Conservation Act and leading and coordinating U.S. coral reef conservation efforts, working closely with other Federal agencies, state and territory governments, and NGO partners
- Leading a comprehensive program to map and monitor U.S. coral reefs
- Increasing understanding of the ecological and oceanographic processes that govern the structure and function of coral reef ecosystems and their response to environmental stressors such as overfishing, pollution, climate change, and disease.
- Designing, evaluating, and adapting specific management decisions that sustain and restore coral reef ecosystems
- Conducting outreach and education to increase community knowledge and support for conservation and management actions.

NMFS implements nearly 40% of the NOAA Coral Reef Conservation Program budget and activities, mostly in Hawaii and the U.S. Pacific, and in Florida and the U.S. Caribbean. Coordinated planning and implementation across NOAA has allowed us to build on our strengths—the science capabilities of the Southeast and Pacific Islands Fisheries Science Centers and the management expertise and responsibilities of its Regional Offices—to support national efforts to conserve coral reef ecosystems.

With our partners, we conduct mapping, habitat characterization, and monitoring of coral reefs and associated ecosystems as well as targeted research to provide managers with scientific information and tools. We support a variety of efforts to develop and implement management solutions to address threats to coral reef ecosystems, especially overfishing, in partnership with Regional Fishery Management Councils, state and territory managers, and NGOs.

Over the next five years, our highest priority will be to support an integrated ecosystem management approach to the conservation of coral reef resources. To this end we will

- Support the national capability to monitor coral reefs that is needed to implement an ecosystem approach to management. In particular, NMFS and its partners will conduct coral reef ecosystem monitoring in National Marine Sanctuaries and remote island locations to complement existing state and territory monitoring programs.
- Reduce overfishing of coral reef resources in partnership with states, territories, and Fishery Management Councils
- Complete removal of major accumulations of marine debris in the Northwestern Hawaiian Islands
- Address deficiencies in our mapping, understanding, and protection of deeper tropical reefs and cold-water coral communities.

We will continue to be a key partner in developing an informed public and supporting targeted research and local initiatives to improve coral reef conservation.

Aquaculture

NMFS is the lead for NOAA's Aquaculture Matrix Program, which also includes OAR, NOS, and NESDIS. The program works to advance two long-term outcomes:

- Well-managed and productive marine aquaculture operations in the United States
- Worldwide adoption of environmentally sound marine aquaculture standards.

Achievement of these outcomes will increase seafood production and possibly support the replenishment of depleted stocks in a way that is both environmentally and economically responsible, both in the United States and internationally.

NMFS carries out the legislative and management aspects of the program as well as much of the research. In its execution, we use our legal/administrative capabilities (including rulemaking, permitting, and coordination); our scientific capabilities (including development of aquaculture systems for food production and stock enhancement, engineering of systems for high-energy offshore environment, and development of ecosystem and human health requirements and protocols for marine aquaculture); our education and outreach capabilities; and our capability to transfer technologies for commercial production, enhancement, and recovery of endangered species to the public and private sector (including pilot and demonstration projects).

In addition to working with other NOAA line offices and programs (including Enforcement and General Counsel) through the Aquaculture Matrix to achieve program goals and objectives, we also work with other related Department of Commerce programs and the Joint Subcommittee on Aquaculture.

Over the next five years we will:

- Develop a comprehensive understanding of marine aquaculture economics and environmental issues associated with aquaculture to provide reliable information and analyses for use in decision-making
- Continue to develop new offshore aquaculture legislation for the Exclusive Economic Zone that will establish a fully operational regulatory infrastructure for offshore aquaculture that includes a streamlined permitting process, siting criteria, and pre-approved zones for offshore aquaculture
- Develop and improve marine species culturing systems for commercial and enhancement purposes
- Contribute to a public understanding of NOAA's aquaculture program by providing access to information on aquaculture research and industry issues.

NOAA Mission Goal: Understand Climate Variability and Change to Enhance Society’s Ability to Plan and Respond

Climate shapes the environment, natural resources, economy, and social systems that people depend upon worldwide. Major climatic events can have substantial impacts on marine ecosystems, leading to serious economic, social, and ecological consequences for living marine resources and society. To properly manage its trust resources, NMFS must measure, understand, and predict the impacts of climate variability and change on marine ecosystems. Our efforts and actions are guided toward delivering trusted, timely climate information to those who need and use it.

NOAA Outcomes	NOAA Strategies	NOAA Programs Executed Wholly or in Part by NMFS
A predictive understanding of the global climate system with quantified uncertainties sufficient for making informed and reasoned decisions on time scales of weeks to decades	Improve the quality and quantity of climate observations, analyses, interpretation, and archiving by maintaining a consistent climate record and by improving our ability to determine why changes are taking place.	<i>Climate and Ecosystems</i>
	Develop the ability to predict the consequences of climate change on ecosystems by monitoring changes in coastal and marine ecosystems, conducting research on climate-ecosystem linkages, and incorporating climate information into physical-biological models.	

Italics represent programs in which other NOAA line offices participate.

Our activities under this goal support the following NOAA performance objectives:

- Understand and predict the consequences of climate variability and change on marine ecosystems
- Increase number and use of climate products and services to enhance public and private sector decision-making.

We participate in only one program under this goal.

Climate and Ecosystems

The Climate and Ecosystems Program—a matrix program led by NMFS in partnership with NOS, OAR, and NESDIS—is just now being established. When implemented, it will provide resource managers the knowledge and tools to adapt to the consequences of climate change to marine and coastal ecosystems. Local- and regional-scale place-based demonstration projects will be conducted to link NOAA climate information with NOAA resource management information to predict the status of marine and coastal living resources in future climates.

Currently, all funding for the Climate and Ecosystems Program resides within NMFS, although we anticipate that other line offices ultimately will participate as well. We will

- Focus studies to understand and predict climate-induced changes on marine ecosystems with critically important fishery stocks that are sensitive to climate variability
- Take an ecosystem approach by investigating the physical and biological controls on a system and how these are affected by climate variability and change
- Develop biophysical indicators and models that meet the needs of managers to adapt to predicted climate-induced changes in living marine resources.

To aid in the development and verification of these indicators and models, we will continuously monitor changes in marine ecosystems through a network of in-situ and remote observing systems. We coordinate the planning of the Climate and Ecosystems Program with NOS and NESDIS, the other line offices involved in the program. NMFS studies will be conducted in partnership with OAR scientists and will leverage other NOAA studies.

Over the next five years we will

- Determine variables and indices that characterize climate impacts on ecosystems
- Develop models to forecast ecosystem responses to climate variability
- Provide information to managers and stakeholders to allow them to adapt to climate-induced changes in marine ecosystems
- Expand the Climate and Ecosystems Program to other geographic regions.

Provide Critical Support for NOAA's Mission

Strong, efficient, and effective leadership and support services within NMFS are essential to supporting NOAA's goals and programs. These qualities must also be able to adapt to evolving needs while improving our capability to support mission goals.

We are committed to organizational excellence through executive leadership, resource planning and management, administrative support, information technology, and specialized project support. We will also continue to improve our international affairs coordination and support, education/outreach/public affairs support, and research and technology applications to ensure effective management and communication.

Over the next five years we will

- Improve our annual budget estimate submission and associated documentation
- Continue oversight and management of NMFS Programs
- Work toward error-free annual financial audits
- Make new investments to improve our IT information sharing and storing capabilities
- Improve our IT security
- Continue to invest in maintaining our facilities to ensure a safe environment for our staff
- Implement a comprehensive agency-wide training program.

We must continue to have the scientific, technical, and administrative expertise necessary to maintain our leadership. We will continue our efforts to develop and sustain a high-performing, diverse, and flexible workforce aligned with our requirements in the face of the anticipated retirement of many of our most knowledgeable employees. We will implement approaches to address the knowledge, skills, and competencies that may be lost soon, especially in the areas of stock assessment, economics, and sociocultural research and analysis. Potential approaches include teaming junior staff members with senior ones, developing career paths for entry-level administrative positions, expanding e-learning to all employees, and increasing the recruitment of students interested in future positions with NMFS. We will continue to educate the workforce about diversity while creating an environment that ensures opportunity for all employees. We will also strengthen partnerships with Minority Serving Institutions.

New investments in technology are needed to take advantage of high-speed telecommunications, web-based technologies, and collaborative analysis techniques to streamline implementation of our mission and provide efficient services to the American public. This will enable rapid data analysis, creation of mobile wireless networks for use in the field, high-speed wide-area network accessibility for Internet-based collaboration tools and conferencing on highly secure networks, and upgrades for our six Regional Data Centers to support distributed relational databases and geo-spatial data warehouses. NMFS will also improve its IT security with full implementation of authentication systems.

New ships are needed to replace outdated ships that are costly to run, have limited capabilities, and break down frequently. New vessels are larger, have state-of-the-art technical capabilities, and are engineered to be quieter to improve stock assessments and behavior work. Increased capacity will allow multiple missions during a single cruise. Finally, they will be more reliable, needing little down time for repairs. The ships' expanded capabilities, efficiencies, and reliability will increase survey days at sea by at least 10% over existing capacity. We also support improvements to aviation operations that enhance their involvement in natural resource surveys.

Implementation and Evaluation

In accordance with the Government Performance and Results Act (GPRA), the Performance Assessment Review Tool (PART), and the directives of the President's Management Agenda (PMA), NMFS reports its results annually based on a set of outcome performance measures that reflect the NOAA performance objectives. We believe it is important to evaluate the success of our stewardship activities according to the positive effects they have on the condition of the resources we manage. However, our performance is influenced by many factors that are partially or wholly beyond our control. Examples of such factors include

- Extreme weather and climate events like hurricanes or El Niño events
- Climate change
- Oil and chemical spills and other environmental catastrophes
- Agriculture practices
- National and global economic trends
- Land development
- Fishing practices of other nations.

Of course, our extensive assessment and prediction activities and capabilities, as well as our planning activities, minimize the effects of these factors on meeting our performance objectives. But the ultimate success of our stewardship is determined in large part by the natural environment and human behavior, neither of which can be controlled absolutely.

Nevertheless, we are optimistic about the future, and we believe that, despite the challenges, Americans do and will continue to enjoy the benefits of diverse and healthy marine ecosystems. When we truly have an informed public using an understanding of coasts and oceans to make social and economic decisions, that vision will be fully realized.

NMFS FY 2006 GPRA Performance Measures in the Context of NOAA Outcomes and Performance Objectives

NOAA Outcomes	NOAA Performance Objectives	NMFS FY2006 GPRA Measures¹	FY 2003 Baseline	FY 2010 Estimated Target
Healthy and productive coastal and marine ecosystems that benefit society	Increase number of fish stocks managed at sustainable levels	Number of overfished major stocks of fish	44	To be discontinued in FY07
		Number of major stocks with an "unknown" stock status	94	To be discontinued in FY07
	Increase number of protected species that reach stable or increasing population levels	Number of protected species designated as threatened, endangered or depleted with stable or increasing population levels (proposed)	18	38
		Number of stocks of protected species with adequate population assessments (proposed)	52	110
	Increase number of regional coastal and marine ecosystems delineated with approved indicators of ecological health and socio-economic benefits that are monitored and understood	[See footnote ²]		
	A well informed public that acts as a steward of coastal and marine ecosystems	Increase number of habitat acres conserved or restored	Number of habitat acres restored (annual/cumulative)	5,200/ 11,020
Increase portion of population that is knowledgeable of and acting as stewards for coastal and marine ecosystem issues		[See footnote ²]		

¹ The current GPRA Measures were submitted with the NOAA FY 2006 budget to the Department of Commerce. We are refining these measures with the goal of creating fewer, higher-level GPRA measures for FY 2007. We have a body of Corporate Performance Measures that includes both the GPRA measures and the performance measures that support GPRA measures.

² These are new objectives therefore performance measures will be developed or selected to represent these objectives. They will not necessarily be GPRA measures.

GLOSSARY

Biodiversity—The variability among living organisms from all sources including, *inter alia*, terrestrial, marine, and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species, and of ecosystems (from the Biodiversity Convention)

Bycatch—Fish which are harvested in a fishery but which are not sold or kept for personal use, and includes economic discards and regulatory discards, but not fish released alive under a recreational catch and release fishery management program (from the MSFCMA)

Capability—The ability to do something with the capacity you have; the capacity to be used, treated, or developed for a specific purpose.

Ecosystem—A geographically specified system of organisms, the environment, and the processes that control its dynamics. Humans are an integral part of an ecosystem.

Ecosystem Approach to Management—Management that is adaptive, is specified geographically, takes into account ecosystem knowledge and uncertainties, considers multiple external influences, and strives to balance diverse social objectives

Endangered Species Act (ESA)—A statute enacted in 1973 to conserve species and the ecosystems on which they depend. Species at risk of extinction are listed as “threatened” or “endangered,” or as “candidates” for listings. Recovery plans are prepared to identify threats to species and the actions necessary to remove the threats.

Environment—The biological, chemical, physical, and social conditions that surround organisms.

Essential Fish Habitat (EFH)—Those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity (from the MSFCMA)

Exclusive Economic Zone (EEZ)—An area which extends from the seaward boundaries of the coastal states (3 nautical miles, in most cases) to 200 miles off the coast of the United States. Within this area, the United States claims and exercises sovereign rights and exclusive fishery management authority over all fish and all Continental Shelf fishery resources.

Fishery—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 any fishing for such stocks (from the MSFCMA)

Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA)—A statute enacted in 1976 primarily to establish an Exclusive Economic Zone (see definition above) in which foreign fishing could be controlled, and to set up a conservation and management structure for U.S. fisheries. Senator Ted Stevens’ name was appended to the title in 1996.

Marine Mammal Protection Act (MMPA)—A statute enacted in 1972 to protect marine mammals and their habitat. These include whales, dolphins, seals, sea lions, walruses, and many others.

Mission Goal—An elaboration of the mission statement, developing with greater specificity how an agency will focus its mission. The NOAA Strategic Plan states NOAA’s four Mission Goals.

Outcome—An end result, both expected and unexpected, of the customer’s use or application of the organization’s outputs.

Overfishing—A rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis (from the MSFCMA)

Performance Measure—A structured statement that describes the means by which actual outcomes and outputs are measured against planned outcomes and outputs. Performance measures consist of four parts: indicator, unit of measure, baseline, and target.

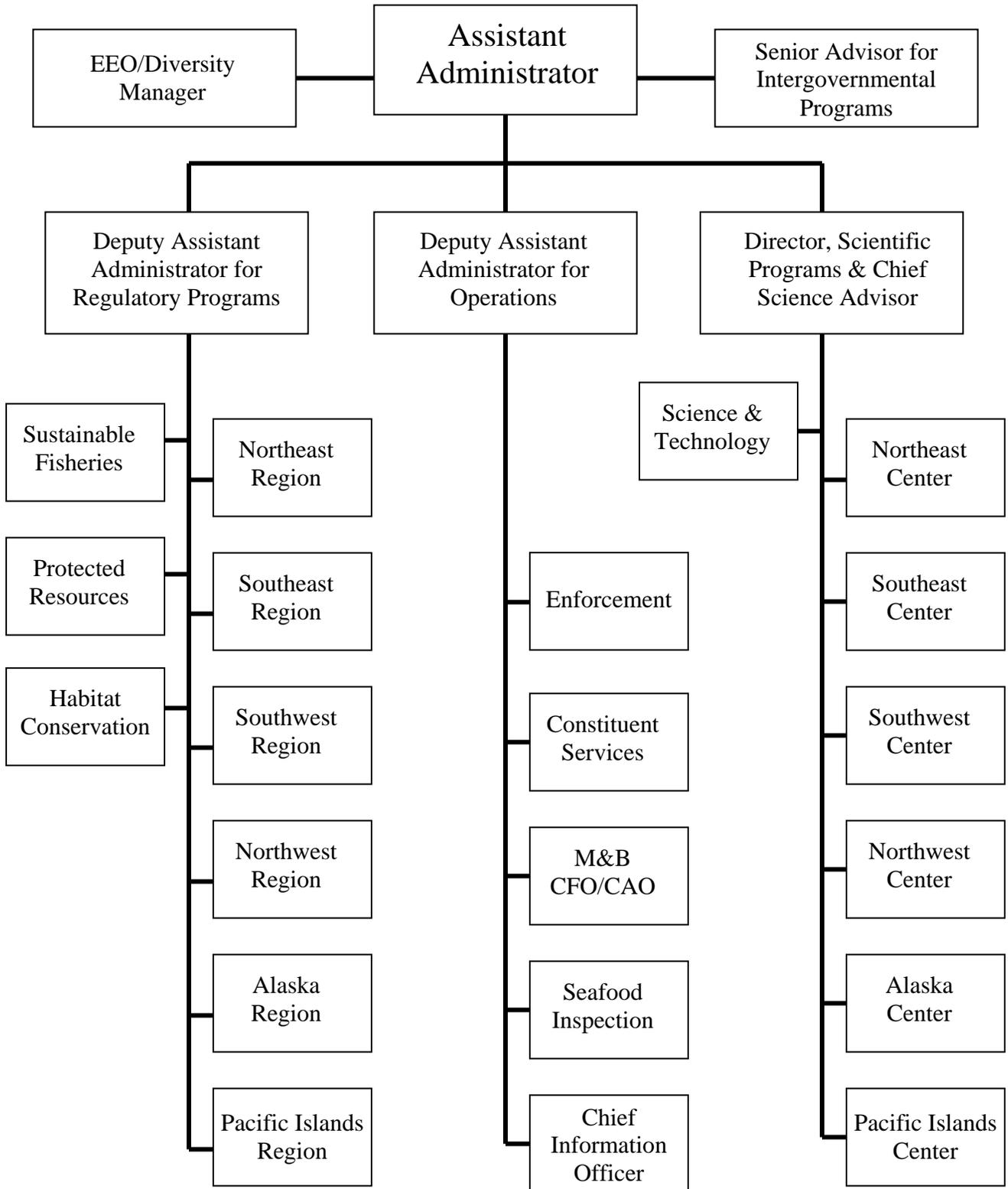
Performance Objective—A further elaboration of an outcome, with greater specificity as to the expected result. Similar to a performance measure but without any indicator, unit of measure, or quantification.

Program—A planned, coordinated set of activities designed to achieve a desired outcome. The defined effort with the purpose of meeting existing requirements or providing a new or improved capability to meet stated requirements. These are officially established by the NOAA Executive Council.

Protected Species—Any species protected by either the ESA or the MMPA, and which is under the jurisdiction of NMFS. This includes all threatened, endangered, and candidate species, as well as all cetaceans and pinnipeds excluding walruses. This term also includes seabirds, which NMFS has a responsibility to protect.

Stock (of fish)—A species, subspecies, geographical grouping, or other category of fish capable of management as a unit (from the MSFCMA)

NMFS Organization Chart



Congressional staff as the report is being developed.

The Board meeting is open to the public. The Board welcomes open dialogue to promote greater focus on critical issues facing USAID, the role of universities in development, and applications of U.S. scientific, technical and institutional capabilities to international agriculture. **Note on Public Comments:** Due to time constraints public comments to the Board will be limited to two (2) minutes to accommodate as many as possible. It is preferred to have comments submitted to the Board in writing. Two periods for public comment will be provided during the Board meeting—just before lunch and adjournment.

Those wishing to attend the meeting or obtain additional information about BIFAD should contact Dr. Ronald S. Senykoff, Executive Director and Designated Federal Officer for BIFAD. Write him in care of the U.S. Agency for International Development, Ronald Reagan Building, Office of Development Partners, 1300 Pennsylvania Avenue, NW., Room 6.7–153, Washington, DC 20523–2110 or telephone him at (202) 712–0218 or fax (202) 216–3124.

Ronald S. Senykoff,

Executive Director and USAID Designated Federal Officer for BIFAD, Office of Development Partners, U.S. Agency for International Development.

[FR Doc. E9–25143 Filed 10–19–09; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF COMMERCE

Environmental Technologies Trade Advisory Committee (ETTAC)

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Environmental Technologies Trade Advisory Committee (ETTAC) will hold a plenary meeting on October 29, 2009 at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, in Room 3407. The ETTAC will discuss environmental goods and services trade liberalization efforts in the World Trade Organization, United Nations climate negotiations in Copenhagen, and other administrative items. This is the first time this ETTAC will meet since its re-chartering in September 2009. The meeting is open to the public and time will be permitted for public comment.

Written comments concerning ETTAC affairs are welcome anytime before or

after the meeting. Minutes will be available within 30 days of this meeting.

The ETTAC is mandated by Public Law 103–392. It was created to advise the U.S. government on environmental trade policies and programs, and to help it to focus its resources on increasing the exports of the U.S. environmental industry. ETTAC operates as an advisory committee to the Secretary of Commerce and the Trade Promotion Coordinating Committee (TPCC). ETTAC was originally chartered in May of 1994. It was most recently re-chartered until September 2010.

DATES: October 29, 2009.

Time: 9 a.m. to 3 p.m.

ADDRESSES: For further information phone Ellen Bohon, Office of Energy and Environmental Technologies Industries (OEEI), International Trade Administration, U.S. Department of Commerce at (202) 482–0359 or via e-mail at: *Ellen.bohon@mail.doc.gov*. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OEEI at (202) 482–5225.

Cheryl McQueen,

Acting Director, Office of Energy and Environmental Industries, U.S. Department of Commerce.

[FR Doc. E9–25125 Filed 10–19–09; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Northeast Region Dealer Purchase Reports

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before December 21, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW.,

Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Peter Burns, (978) 281–9144 or *reporting.ne@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Federally-permitted dealers, and any individual acting in the capacity of a dealer, must submit to the Regional Administrator or to the official designee a detailed report of all fish purchased or received for a commercial purpose, other than solely for transport on land by one of the available electronic reporting mechanisms approved by National Marine Fisheries Service (NMFS). The information obtained is used by economists, biologists, and managers in the management of the fisheries. The data collection parameters are consistent with the current requirements for Federal dealers under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. NOAA is seeking to renew Paperwork Reduction Act approval for these requirements.

II. Method of Collection

Dealers submit purchasing information through an electronic process by either one of two NMFS supplied programs or through a NMFS approved mechanism.

III. Data

OMB Control Number: 0648–0229.

Form Number: NOAA Forms 88–30 is no longer being used. Federally permitted dealers submit fishery information through electronic processes.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations; individuals or households.

Estimated Number of Respondents: 781.

Estimated Time per Response: 4 minutes per fishing trip.

Estimated Total Annual Burden Hours: 2,722.

Estimated Total Annual Cost to Public: \$460,200.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the

proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 15, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9-25141 Filed 10-19-09; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Processed Products Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before December 21, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Alan Lowther, (301) 713-2328 or Alan.Lowther@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

National Oceanic and Atmospheric Administration (NOAA) annually collects information from seafood and

industrial fishing processing plants on the volume and value of their processed fishery products and monthly employment figures. NOAA also collects monthly information on the production of fish meal and oil. The information gathered is used by NOAA in the economic and social analyses when proposing and evaluating fishery management actions.

II. Method of Collection

In the current survey, NOAA's National Marine Fisheries Service (NMFS) provides each processor a pre-printed form that includes the products produced by the dealer in the previous year. The dealer needs only to fill in the quantities, and add any new products, before returning the form every year. Processors have the option to use a Web-based application that allows them to submit the data electronically.

III. Data

OMB Control Number: 0648-0018.

Form Number: NOAA Forms 88-13, 88-13C.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,322.

Estimated Time per Response: 30 minutes for an Annual Processed Products Report and 15 minutes for a Fishery Products Report Fish Meal and Oil, Monthly.

Estimated Total Annual Burden Hours: 681.

Estimated Total Annual Cost to Public: \$0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 15, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9-25134 Filed 10-19-09; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-840, A-549-822]

Certain Frozen Warmwater Shrimp From India and Thailand: Notice of Extension of Time Limits for the Preliminary Results of the Fourth Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood (India) at (202) 482-3874, or Kate Johnson (Thailand) at (202) 482-4929, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Background

On April 7, 2009, the Department of Commerce (the Department) published a notice of initiation of the administrative reviews of the antidumping duty orders on certain frozen warmwater shrimp from Brazil, India and Thailand covering the period February 1, 2008, through January 31, 2009. *See Certain Frozen Warmwater Shrimp from Brazil, India, and Thailand: Notice of Initiation of Administrative Reviews*, 74 FR 15699 (April 7, 2009).

On May 13, 2009, the Department selected respondents for individual examination in the reviews of certain frozen warmwater shrimp from India and Thailand.¹ *See the Memorandum from Holly Phelps to James Maeder entitled "2008-2009 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India: Selection of Respondents for Individual Review,"* and the Memorandum from Kate Johnson and David Goldberger to James Maeder entitled "2008-2009 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from Thailand: Selection of Respondents for Individual Review."

¹ The Department rescinded the administrative review of frozen warmwater shrimp from Brazil on June 17, 2009. *See Certain Frozen Warmwater Shrimp from Brazil: Notice of Rescission of Antidumping Duty Administrative Review*, 74 FR 28665 (June 17, 2009).