

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 12/02/2011

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 12/02/2011

ACTION REQUESTED: Revision of a currently approved collection
TYPE OF REVIEW REQUESTED: Regular
ICR REFERENCE NUMBER: 201112-0648-004
AGENCY ICR TRACKING NUMBER:
TITLE: Vessel Monitoring System for Atlantic Highly Migratory Species
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change
OMB CONTROL NUMBER: 0648-0372

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: 10/31/2014

DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	292	584	246,850
New	48,358	4,470	524,473
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	48,066	3,886	277,623
Change due to Agency Adjustment	0	0	0
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
Vessel Monitoring System for Atlantic Highly Migratory Species - Installation, installation and activation checklist, annualized	NA	Atlantic HMS installation and activation checklist	50 CFR 635.69
Beginning and Ending Trip declaration through VMS plus cost of automatic location responses			50 CFR 635.69

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</p> <p style="text-align: center;"><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
VESSEL MONITORING SYSTEM FOR ATLANTIC HIGHLY MIGRATORY SPECIES
OMB CONTROL NO. 0648-0372**

A. JUSTIFICATION

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

The purpose of this collection of information is to comply with the [Magnuson-Stevens Fishery Conservation and Management Act](#) (Magnuson-Stevens Act), the United States' obligations under the [Atlantic Tunas Convention Act](#) of 1975 (ATCA; 16 U.S.C. 971), other domestic Federal regulations, and the implementing regulations at [50 CFR part 635](#).

In this revision request, *resubmitted for the final rule*, the National Marine Fisheries Service (NMFS) is proposing that Mobile Transmitting Unit (MTU) Vessel Monitoring System (VMS) units be replaced by Electronic Mobile Transmitting Unit (E-MTU) VMS units in Atlantic HMS fisheries subject to VMS requirements. These updated VMS units are capable of sending and receiving electronic messages. Using the updated E-MTU VMS units, NMFS also proposes implementing a declaration system through which vessels declare target species and gear deployed for fishing trips. These modifications would improve enforcement of HMS regulations.

VMS aids the NMFS Office of Law Enforcement (OLE) in monitoring and enforcing closed areas implemented to reduce bycatch of juvenile swordfish, sharks, sea turtles, and other species necessary to comply with the Marine Mammal Protection Act, Endangered Species Act, and National Standard 9 (bycatch and bycatch mortality reduction) of the Magnuson-Stevens Act. There are numerous areas that are closed to fishermen fishing for Atlantic highly migratory species (HMS) with pelagic and bottom longline gear onboard. Consistent with implementing regulations in place for the Atlantic Large Whale Take Reduction Plan (ALWTRP), shark gillnet vessels are required to use VMS at certain times of year to minimize the likelihood of interactions between fishing gear and marine mammals. Traditional methods of surveillance by ships and planes would be ineffective in patrolling such large areas. In HMS fisheries, VMS is designed to automatically report positions on all vessels carrying pelagic longline gear (at all times and all locations), bottom longline gear (vessels between 33°00' N. latitude and 36°30' N. latitude between January 1 and July 31 every year), or shark gillnet (all locations, between November 15 and April 15) gear on board.

By requiring that E-MTU VMS units be professionally installed and used to replace the dated MTU VMS units, NMFS will ensure that newer, more reliable, technology is in use, improve fisheries monitoring and enforcement of regulations, and provide NMFS enforcement agents with the ability to communicate directly with vessels at sea via electronic messaging and other means. With this newer technology, NMFS enforcement agents could: notify vessel operators of emergency changes to closed areas; provide notice of fishery closures in real time; inform operators of environmental disasters (oil rig fires/oil spills); send notice of dangerous weather; and receive distress or emergency transmissions.

NMFS is also proposing that, two hours prior to leaving port, fishermen provide NMFS enforcement with notice of the beginning of a fishing trip and a declaration of the target fishery and gear onboard. In addition, this proposed rule would require vessel operators to provide a minimum of three hours' advance notice of landing. Currently, vessel operators are required to turn on the VMS unit two hours before leaving port. Under this proposed rule, vessel operators would also need to declare the species being targeted and the gear being used. Creating a fishery declaration system would facilitate enforcement and compliance monitoring. Vessels may be permitted to participate in multiple fisheries that authorize numerous fishing gears. The declaration system would provide NMFS enforcement with advance notice of the target fishery and gear possessed onboard which provides enforcement with critical information concerning which regulations apply to that particular vessel during that trip.

Any new declaration system would be compatible with the capabilities of newly required E-MTU VMS units and consistent with declaration protocols currently employed in Council-managed fisheries. Additionally, the requirement to notify NMFS enforcement at least three hours prior to returning to port provides notification that fishing activities are being completed, gear is no longer being deployed, and the vessel is transiting back to port.

Vessels with E-MTU VMS units would be able to communicate through electronic messages with shore-based fishery personnel, which could allow fishery participants to: communicate directly with NMFS enforcement in the case of a power disruption; download updated E-MTU software without removal of the device; communicate with manufacturers to remedy malfunctions; receive required software upgrades with little interference; communicate with vessel owners and fish houses; and send distress calls to monitoring companies in the event of an emergency. Although some of these features are potentially useful functions, they are not the primary purpose of VMS and, it is important that fishermen not see them as a substitute for required safety equipment such as a properly installed and functioning Emergency Position Indicating Radio Beacon (EPIRB).

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 applicable NOAA Information Quality Guidelines.

The installation and activation checklist would be submitted one time after the new E-MTU VMS unit is installed by a qualified marine electrician. The checklist indicates the procedures to be followed by the marine electricians whom install the updated E-MTU VMS units. These forms would be completed by the electricians and then submitted to NMFS by the vessel owner. This checklist provides the OLE with information about the hardware installed and the communication service provider that will be used by the vessel operator. Specific information that links a permitted vessel with a certain transmitting unit and communications service is necessary to ensure that NMFS will receive automatic position reports properly. In the event that there are problems, NMFS will have access to a database that links owner information with installation information. NMFS can then contact the vessel operator and discern whether the problem is associated with the transmitting hardware or the service provider.

Existing MTU VMS units are programmed to report the vessel's location to National Oceanic and Atmospheric Administration (NOAA) OLE every hour, 24 hours a day, while the vessel is away from port. This allows vessels to traverse closed areas or remain at sea after a fishery has closed as long as they do not commence fishing operations. NOAA OLE uses VMS position data to reduce costs and improve enforcement of time/area closures, to monitor the fleet during the closed period, to deter illegal fishing, to increase efficiency of surveillance patrols, to provide probable cause for obtaining a search warrant in enforcement investigations, and to support enforcement of other regulations such as closed seasons once a quota has been reached. NMFS is now requiring that an updated E-MTU VMS unit be installed and used to transmit information. Because these units are capable of engaging in two-way communication and sending and receiving electronic messages, NMFS would also implement a fisheries declaration system. Two hours prior to leaving port to engage in fishing activities, vessels would provide NMFS OLE with a declaration of target species and gear being deployed for a particular trip. Before returning to port, vessels would again notify NOAA OLE three hours prior to landing after fishing activities have been completed. This information would allow NOAA OLE to more accurately track and monitor vessels for compliance in specific fisheries. Any new declaration system would be compatible with the capabilities of newly required E-MTU VMS units.

NOAA Information Quality Guidelines do not apply to this information collection because the information collected will not be disseminated to the public.

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.

VMS is the best technology available at this time for monitoring vessel locations to aid enforcement efforts. The integrated Global Positioning System (GPS) provides a near real-time mechanism for submitting accurate position reports. VMS is considered much more accurate than logbooks for reporting geographical distribution of fishing effort for each trip. Logbooks are submitted by fishermen seven days after offloading and only provide information regarding the start of a fishing set. Thus, logbooks do not meet the real-time needs of enforcement and could allow vessels to fish illegally in closed areas without prosecution. VMS, on the other hand, provides 24 reports each day for the duration of the trip. Report data, in conjunction with a declaration by the vessel, two-hours prior to leaving port, would provide pertinent data concerning target species and gear being deployed. This information is important for discerning which closed areas apply to a particular vessel and allows enforcement to react immediately if a vessel is found fishing in a closed area.

MTU VMS units have been required in certain HMS fisheries since 2003. Recently, E-MTU VMS units have become available and are currently being used in Council-managed fisheries. These updated E-MTU units are capable of two-way communication which expands the potential for transmission of electronic information to/from NMFS. A fishery declaration system would be implemented where vessels send information to NOAA OLE concerning the target species and gear being deployed prior to leaving port to engage in fishing activities and after fishing is completed. Furthermore, vessels would be able to receive information from NOAA concerning weather alerts, natural disasters, fishery closures, and other information. The updated VMS units

may provide a platform for future electronic logbook reporting of both target and non-target species.

4. Describe efforts to identify duplication.

Position reports at the start of each fishing set are required of participants using the HMS logbook, and will therefore be duplicated by participants using VMS; however, VMS position reports are automated and would need to be sent every hour while vessels are away from port and would not require any action on the part of the vessel operator. Typically, most of the participants in the pelagic longline (PLL) fishery for tunas and/or swordfish use the HMS logbook. Vessels participating in the shark bottom longline (BLL) and gillnet fisheries use a different logbook (Coastal Fisheries Logbook) that does not require position reports of individual fishing set and would not be duplicated. If electronic catch reporting is developed in the future, paper logbooks may become obsolete.

There are no alternate sources of such specific and near real-time vessel location and activity information. Use of VMS is required in other fisheries and fishermen who have already purchased a VMS unit can use the same unit for multiple fisheries. Information is only reported one time to enforcement and not duplicated.

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

All owners of vessels with commercial permits for HMS, (*i.e.*, swordfish, sharks, and tuna) are considered small entities. Proposed VMS regulations would require the approximately 329 pelagic longline, bottom longline, and shark gillnet vessels to maintain their new VMS units at a daily cost of approximately \$1.56/day (24 location reports + 2 declaration reports x \$0.06/transmission). Individual position or message reports cost \$0.06/transmission for both sending and receiving data. In an attempt to provide vessel owners with some flexibility, NOAA OLE has published general type approval specifications in the Federal Register (January 31, 2008; 73 FR 5813) describing the types of units that would be appropriate. Existing units that meet the criteria range in price from \$3,100 - \$3,600, depending on the features of the E-MTU VMS device. This provides vessel owners with some flexibility of choice and helps to minimize costs. Vessels are already required to use a MTU VMS in certain HMS fisheries, therefore, active vessels will need to purchase new equipment and cover updated operation and data transmission costs.

Currently, reimbursement funds (\$3,100/E-MTU VMS unit) may be available for some HMS fishery participants required to upgrade to E-MTU VMS units. The reimbursement could only be applied to the costs of the updated unit and would not offset any costs incurred as a result of installation by a qualified marine electrician or of data transmission. Participants that have already received reimbursement funds from NOAA OLE for an E-MTU VMS may not be eligible to receive additional reimbursement funds.

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

Using VMS to verify the location of a vessel is passive and automatic, requiring no reporting time on the part of the vessel operator. ICCAT recognizes the developments in satellite-based VMS and their possible utility, including better resource management and, thus, more effective and sustainable use of resources. More specifically, benefits for management include increased compliance with and enhanced enforcement effectiveness regarding area restrictions, more timely data regarding fishing effort by areas, and more timely catch reporting. Other possible benefits of the VMS include increased vessel safety and dependable and confidential communications, which may improve fleet management.

Monitoring and enforcement are essential components of fisheries management. Monitoring fishing vessels facilitates enforcement of NMFS' conservation and management regulations by enabling detection of violations. Monitoring also promotes compliance by having a general deterrent effect. Lack of proper monitoring and enforcement makes it difficult to gauge the effectiveness of conservation and management measures. In the case of overfished stocks, enforcement is necessary to prevent further overfishing and subsequent decline to dangerously low stock levels. As a practical matter, it is very difficult for enforcement personnel to effectively monitor the full operational range of the U.S. pelagic longline fleet without having some method of detecting a vessel's location. With respect to pelagic longline time/area closures in particular, the size of the closed areas makes the likelihood of detection through conventional surveillance methods rather small.

The use and submission of a checklist, completed by a qualified marine electrician, is required only for the initial installation or when the hardware or communications service provider changes.

Less frequent reporting would prevent NMFS and the vessel operator from confirming that the system is functioning properly and would make it more difficult to determine whether a vessel is fishing in, or transiting through a closed area. Furthermore, not requiring vessels to make a declaration before leaving port describing target species and gear deployed would make it difficult for NOAA OLE to know which closed areas and other regulations apply to that particular vessel.

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

VMS will be reporting positions 24 times a day, which is more frequent than OMB guidelines suggest. This frequency is required for the near real-time and accurate tracking of vessel activities. The requirement for 24 position reports per day is designed to allow NMFS to distinguish between a vessel that is setting gear, and a vessel that is traversing a closed area. Fewer reports would indicate that a vessel was in the area but would not indicate whether the vessel was setting gear or traversing the area. The time burden as a result of this frequency, however, remains minimal because the position reports are automated and require no action on the part of the vessel operator. As stated above, the two-time (per trip) declaration would

facilitate improved enforcement of regulations because NOAA OLE would know which gear is being deployed and the relevant target species for individual trips.

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 proposed rule 0648-BA64 seeking public comment was published coincident with the first submission of this information collection request. *Based on one comment received, the upper limit of the new VMS installation cost was changed from \$200 to \$400.*

A final rule will be published in early October, 2011. A draft is included in this submission.

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

No payments or gifts are to be offered as part of this information collection.

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

As stated on the VMS installation and activation checklist, all automated position reports and declaration reports received by NMFS will be treated as confidential data in accordance with the Magnuson-Stevens Act and [NOAA Administrative Order 216-100](#).

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 questions of a sensitive nature are asked.

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

A total of 329 vessels are subject to the updated VMS requirements (Table 1). Based on the number of limited access (directed and incidental) permits for swordfish, an estimated 249 pelagic longline vessels are subject to the VMS requirement. Based on the number of limited access directed shark permits, an estimated 50 bottom longline shark fishing vessels and 30 shark gillnet vessels are also subject to the VMS requirement. Once the updated VMS is installed by a qualified marine electrician, the vessel owner would be required to submit a activation checklist via regular mail to NOAA OLE. **The estimate for this burden is 5 minutes per participant.** Prior to engaging in fishing activities the vessel operator must turn the system on two hours before leaving port and verify that the system is functioning properly. At that time, vessels

would transmit an electronic message to NOAA OLE declaring target species and gear deployed for the fishing trip. Vessels would also report to NOAA OLE when they are returning to port. **NMFS estimates that these declarations would require approximately 10 minutes per trip (2 declarations, 5 minutes/declaration)).** Once on, position reports are automatically sent from the VMS on an hourly basis. The automatic position reports are not considered burden to the respondents. *Burden associated with maintenance is not anticipated with the updated E-MTU VMS units.*

Table 1. Number of HMS Vessels Required to Comply with VMS Requirements by Gear Type Based on 2010 Permit Data.

Pelagic Longline (Swordfish Directed + Swordfish Incidental)	Bottom Longline (Directed and Incidental Shark Permit Holders in NC, SC, and VA)	Gillnet (Vessels with a Directed Shark Permit and Landed Sharks with Gillnet, 2004-2007)	Total
249	50	30	329

Pelagic Longline Vessels:

Trip duration within the PLL fleet varies based on time of year, location, target species, market prices, quota availability, and other factors. Logbook data from 2006-2009 indicate that the average trip duration for PLL vessels was 9 days. It is assumed that vessels need at least one day in port to offload their catch and procure supplies before returning to sea, during which time they would not be required to provide position reports. On average, PLL vessels may take 36 trips per year, which equals 324 days per year at sea (36 trips/year * 9 days/trip = 324).

One-time burden:

Total responses: 249 (installation considered part of activation response) annualized to 83.
 Installation time: average of 4 hours x 249 = 996 hours.
 Submission of completed installation checklist: 5 minutes x 249 = 1,245 min/60 min. = 20.41 hours.
 Total hours: 1,016.41, annualized to 338.8 (339) hours.

Recurring burden:

Per vessel responses: 36 trips/year * 2 declarations = 72 declarations. Total responses: 72 * 249 = **17,928**.
 36 trips/year * 2 declarations/ * 5 minutes/declaration / 60 minutes/hour = 6 hours/vessel).
 Estimated burden for the entire PLL fleet would be 1,494 hours (249 vessels * 6 hours/vessel = **1,494 hours**).

Total annualized/annual responses: 83 + 17,928 = 18,011.

Total annualized/annual hours: 339 + 1,494 = 1,833.

Shark Bottom Longline Vessels:

All vessels with bottom longline gear onboard are required to use VMS from January 1 to July 31 when they are between 33 N and 36.3 N, on an annual basis.

During this time period (January-July) and in this vicinity, most participants with bottom longline on board would be targeting large coastal sharks (LCS). It is assumed that most vessels targeting LCS would be making day-trips (i.e., returning to port to offload once every 24 hours). For the purpose of estimating the potential burden of this requirement participants *could* also be fishing for small coastal sharks and pelagic sharks which are typically open for the duration of the time period in this area. Therefore, it is assumed that vessels could be in this vicinity with BLL gear onboard for 212 days/year (January 1 – July 31).

One-time burden:

Total responses: 50 (installation considered part of activation response) annualized to 17.
Installation time: average of 4 hours x 50 = 200 hours.
Submission of completed installation checklist: 5 minutes x 50 = min/60 min. = 4.2 hours.
Total hours: 204, annualized to (68) hours.

Recurring burden:

Per vessel responses: 212 trips/year * 2 declarations = 424 declarations. Total responses: 424 * 50 = **21,200**.
212 trips/year * 2 declarations/ * 5 minutes/declaration / 60 minutes/hour = 35.3 hours/vessel.
Estimated burden for the entire BLL fleet would be hours (50 vessels * 35 hours/vessel = **1,767 hours**).

Total annualized/annual responses: 17 + 21,200 = 21,217 responses.

Total annualized/annual hours: 68 + 1,767 = 1,835 hours.

Directed Shark Gillnet Vessels:

Vessels that possess a shark directed permit and have gillnet gear onboard between November 15 and April 15 would be required to use VMS when they are away from port in the Southeast U.S. Restricted Area as defined in 50 CFR 229.32.

The gillnet fishery primarily targets small coastal sharks (SCS) and blacktip sharks (included in the non-sandbar LCS complex). Season length for sharks varies from year to year based on quota availability, catch rates, and other considerations. Many shark gillnet vessels possess permits which allow them to participate in other fisheries using gillnet gear, therefore, to estimate burden it is assumed that affected vessels could be engaged in fishing activities and subject to VMS requirements for the duration of this time period every year (152 days).

One-time burden:

Total responses: 30 (installation considered part of activation response) annualized to 10.
Installation time: average of 4 hours x 30 = 120 hours.
Submission of completed installation checklist: 5 minutes x 30 = 150 min/60 min. = 2.5 hours.
Total hours: 123, annualized to (42) hours.

Recurring burden:

Per vessel responses: 152 trips/year * 2 declarations = 304 declarations. Total responses: 304 * 30 = **9,120**.

152 trips/year * 2 declarations/trip * 5 minutes/declaration / 60 minutes/hour = 25.3 hours/vessel. Estimated burden for the entire gillnet fleet would be hours (30 vessels * 25.3 hours/vessel = **760 hours**).

Total annualized/annual responses: 10 + 9,120 = 9,130 responses.

Total annualized/annual hours: 42 + 760 = 802 hours.

Table 2 Summary of the estimated burden for PLL, BLL, and gillnet vessels.

	PLL vessels	BLL vessels	Gillnet vessels	Total
Respondents	249	50	30	329
Responses	18,011	21,217	9,130	48,358
Hours	1,833	1,835	802	4,470

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).

In the table below, purchase and installation costs for the 329 vessels required to have VMS are one-time costs and are not included in subsequent years' annual cost burden estimates, but are annualized in the text below the table. Note that there is no submission cost for the activation checklist.

Table 3. Summary of the total costs associated with the revised E-MTU VMS requirements in Atlantic HMS fisheries.

	Pelagic Longline Vessels	Shark Bottom Longline Vessels	Shark Gillnet Vessels
E-MTU VMS Unit	\$3,100	\$3,100	\$3,100
Estimated Installation Costs (one-time)	\$50-400 (\$400 used for estimation purposes)	\$50-400 (\$400 used for estimation purposes)	\$50-400 (\$400 used for estimation purposes)
Daily Position Report Costs (Hourly, 24/day) (\$0.06/report * 24 reports/day)	\$1.44	\$1.44	\$1.44
Estimated Days Fishing/Year	324	212	152
Annual Position Report Costs/ Vessel (\$1.44/day * days fishing/year)	\$466.56/vessel	\$305.28/vessel	\$218.88/vessel
Annual Number of Fishing Trips	36	212	152
Annual Gear/Spp. Declaration Costs	\$4.32	\$25.44	\$18.24

	Pelagic Longline Vessels	Shark Bottom Longline Vessels	Shark Gillnet Vessels
(\$0.12/trip)/Vessel (\$0.12/trip * trips/year)**			
Total Estimated Costs/Vessel (Year 1) (VMS unit +installation+position reports+declaration reports)	\$3,970.88	\$3,830.72	\$3,737.12
Number of Affected Vessels	249	50	30
Total Costs by Fishery (Year 1) (Total Estimated Costs/Vessel*Number of Affected Vessels)	\$988,749	\$191,536	\$112,113
Gross Cost of Compliance, Year One (all HMS vessels combined)	\$1,292,398		
Potential Reimbursement Funds (\$3,100/vessel * Number of Affected Vessels)	\$1,019,900		
Compliance Costs (Year 1) (avg. cost/vessel) (installation + position reports + declaration reports)	\$870/vessel	\$730/vessel	\$637/vessel
Compliance Costs/Vessel (Year 2 and Beyond) (position reports + declaration reports)	\$470/vessel	\$330/vessel	\$237/vessel

Note: Although \$1,019,900 may be available as reimbursement funds, we are currently requesting approval for the full capital and start-up funds of \$1,151,500.

Total capital and start-up costs would be \$1,151,500 (\$3,500 x 329 vessels), annualized to \$383,833.

Total annually recurring reporting costs will be (\$470 x 249 = \$117,030) + (\$330 x 50 = \$16,500) + (\$237 x 30 = \$7,110): \$140,640 (average of 427.48 per vessel).

Total annualized costs would be 524,473, or an average of \$1,594 per vessel.

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

There would be no significant cost to the Federal government outside of the initial reimbursement. NMFS is developing an integrated hardware and tracking system to manage the various VMS programs being developed for many other U.S. fisheries. Those costs are already covered by current programs of the Office of Law Enforcement and are extraneous to this collection. Given the current capacity of these systems, incremental costs specifically attributable to the HMS VMS program are negligible.

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

Adjustment(s): The number of affected vessels has changed from 292 to 329.

Program changes: The hours and costs are changed to reflect changes to VMS equipment, maintenance, and installation costs and reporting requirements.

1. Purchase and installation of 329 new VMS units.
2. Removal of \$500 annual repair/maintenance responses and expenses for 292 current VMS units.
3. Addition of \$0.12 data transmission costs per trip for 292 units and \$1.12 for the additional 37.
4. Addition of cost estimates (\$400) for having a qualified marine electrician install E-MTU VMS units.

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

No formal scientific publications based on this program are planned at this time. The data will be used for enforcement, management reports, and drafting or evaluating fishery management plan amendments by NMFS. However, subsequent use of the data collected over a series of years may be included in scientific papers and publications. Position data will remain confidential and will only be revealed to the public in aggregated form.

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.

Not Applicable.

18. Explain each exception to the certification statement.

There are no exceptions.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.

Vessel Monitoring Systems Certification Statement for Atlantic Highly Migratory Species Fisheries

INSTRUCTIONS: This form should be completed and signed by the owner and the qualified marine electrician that installed the VMS unit on the vessel named below. The completed form should be sent to NOAA Office of Law Enforcement, 263 13th Avenue South, Suite 109, St. Petersburg, Florida 33701. This Vessel Monitoring Systems (VMS) Certification Statement for the Highly Migratory Species (HMS) Fisheries is provided by the National Marine Fisheries Service (NOAA Fisheries) pursuant to the regulatory requirements of 50 C.F.R. § 635.69. This certification statement is applicable for the VMS providers currently approved for use in HMS fisheries.

A qualified marine electrician must follow the manufacturer's installation procedures when installing or re-installing a NOAA Fisheries-approved VMS unit. The vessel owner is responsible for all installation and activation costs. After completion of the installation and activation, the owner should confirm that NOAA Fisheries is receiving position reports by calling NOAA Office of Law Enforcement in St. Petersburg, Florida, at 800-758-4833 or by sending an e-mail to: NMFS.OLE.SE@noaa.gov.

Vessel Name: _____ U.S Coast Guard Documentation Number: _____

Installing marine electrician or dealer (name, address, and telephone number):

Date of Installation (mm/dd/yyyy): _____

VMS Enhanced Mobile Transceiver Unit (E-MTU):

Manufacturer name: _____

Model: _____

Manufacturer serial number (S/N): _____

Communication network serial number (ISN): _____

VMS Mobile Communications Service Provider (MCSP)

Communications provider name: _____

Communications ID number assigned by service provider: _____

Once the VMS E-MTU was installed, did the electrician/dealer, or the owner and/or operator of the vessel verify with NOAA OLE VMS Program personnel that position data was being received?

Yes No

Certification:

In accordance with 50 C.F.R. § 635.69(d), as a qualified marine electrician, I hereby certify that the VMS system on the vessel named above has been installed in compliance with applicable procedures.

Vessel Owner/Operator's Name: _____

Vessel Owner/Operator's Signature _____ Date: _____

Installer's Name: _____

Installer's Signature: _____ Date: _____

Under the provisions of the Paperwork Reduction Act of 1995 (PL 104-13) and the Privacy Act of 1974 (PL 93-579), you are advised that disclosure of the information requested in the Vessel Monitoring System (VMS) certification statement is mandatory for the purpose of managing the Atlantic HMS fisheries. The certification statement is used to ensure proper operation of the VMS unit. Reporting burden for the collection of information is estimated to average 4 hours per installation, including time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the information. The burden for submission of this certification statement is estimated at 5 minutes per response. Confidentiality of the information provided will be treated in accordance with NOAA Administrative Order 216-100. It is the policy of the National Marine Fisheries Service not to release confidential data, other than in aggregate form, as the MSA protects the confidentiality of those submitting data. Whenever data are requested, NMFS ensures the information identifying the pecuniary business activity of a particular individual is not identified. This information collection has been issued a valid OMB control number, and is subject to the requirements of the Paperwork Reduction Act and penalties associated with non-compliance. Send comments regarding this burden estimate or suggestions for reducing this burden to: NMFS, Office of Law Enforcement, 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910.

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

16 U.S.C. 1853a
MSA § 303A

(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.

50 CFR 635.69 - Vessel monitoring systems.

50 CFR 635.69 - Vessel monitoring systems.

Id. vLex: VLEX-19895659

<http://vlex.com/vid/19895659>

Text

TITLE 50 - WILDLIFE AND FISHERIES

CHAPTER VI - FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 635 - ATLANTIC HIGHLY MIGRATORY SPECIES

subpart f - ENFORCEMENT

635.69 - Vessel monitoring systems.

(a) Applicability. To facilitate enforcement of time-area and fishery closures, an owner or operator of a commercial vessel, permitted to fish for Atlantic HMS under 635.4 and that fishes with a pelagic or bottom longline or strikenet gear, is required to install a NMFS-approved vessel monitoring system (VMS) unit on board the vessel and operate the VMS unit under the following circumstances: (1) Whenever the vessel is away from port with pelagic longline gear on board; (2) As of January 1, 2005, whenever a vessel issued a directed shark LAP, is away from port with

bottom longline gear on board, is located between 3300' N. lat. and 3630' N. lat., and the mid-Atlantic shark closed area is closed as specified in 635.21(d)(1); or (3) As of November 15, 2004, whenever a vessel, issued a directed shark LAP, is away from port with a gillnet on board during the right whale calving season specified in the Atlantic Large Whale Take Reduction Plan in 229.32(f) of this title.

(4) A vessel is considered to have pelagic longline gear on board, for the purposes of this section, when gear as specified at 635.21(c) is on board. A vessel is considered to have bottom longline gear on board, for the purposes of this section, when gear as specified at 635.21(d) is on board. A vessel is considered to have gillnet gear on board, for the purposes of this section, when gillnet, as defined in 600.10, is on board a vessel that has been issued a shark LAP.

(b) Hardware specifications. The VMS hardware must be approved by NMFS and must be able to perform all NMFS required functions. NMFS will file with the Office of the

50 CFR 635.69 - Vessel monitoring systems.

<http://vlex.com/vid/19895659>

Federal Register for publication notification listing the specifications for approved VMS units. As necessary, NMFS will make additions and/or amendments to the VMS hardware type approval list to account for changes in specifications or new products offered by manufacturers. NMFS will file with the Office of the Federal Register for publication notification listing such additions and/or amendments.

(c) Communications specifications. The communications service provider must be approved by NMFS and must be able to provide all NMFS required functions. NMFS will file with the Office of the Federal Register for publication notification listing the specifications for approved VMS communications service providers. As necessary, NMFS will make additions and/or amendments to the VMS communications service providers type approval list to account for changes in specifications or new services offered by communications providers. NMFS will file with the Office of the Federal Register for publication notification listing such additions and/or amendments.

(d) Installation and service activation. When installing and activating the NMFS-approved VMS unit, a vessel owner or operator must follow procedures indicated on an installation and activation checklist obtained from NMFS. Re-installation shall require the same checklist.

Upon completion of installation, the vessel owner must sign a statement certifying compliance with the installation procedures of the checklist and submit such certification to NMFS as indicated on the checklist.

Vessels fishing prior to submission of the certification will be in violation of the VMS requirement.

(e) Operation. Owners or operators of vessels permitted, or required to be permitted, to fish for HMS, that have pelagic or bottom longline gear or gillnet gear on board, and that are required to have a VMS unit installed, as specified in paragraph (a), must activate the VMS to submit automatic position reports beginning 2 hours prior to leaving port and continuing until the vessel returns to port. While at sea, the unit must operate without interruption and no person may interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS, or attempt any of the same. Vessels fishing outside the geographic area of operation of the installed VMS will be in violation of the VMS requirement.

(f) Interruption. When the vessel operator is aware that transmission of automatic position reports has been interrupted, or when notified by NMFS that automatic position reports are not being received, the vessel operator must contact NMFS and follow the instructions given. Such instructions may include but are not limited to manually communicating to a location designated by NMFS the vessel's position or returning to port until the VMS is operable.

(g) Repair and replacement. After a fishing trip during which interruption of automatic position reports has occurred, the vessel's owner or operator must replace or repair the VMS unit prior to the vessel's next trip. Repair or reinstallation of a VMS unit or installation of a replacement, including change of communications service provider shall be in accordance with the checklist provided by NMFS and require the same certification.

(h) Access. As a condition to obtaining a LAP for Atlantic swordfish, sharks, or tunas, all vessel owners or operators using pelagic or bottom longline or gillnet gear, subject to the VMS provisions of this section must allow

50 CFR 635.69 - Vessel monitoring systems.

<http://vlex.com/vid/19895659>

NMFS, the USCG, and their authorized officers and designees access to the vessel's position data obtained from the VMS at the time of or after its transmission to the vendor or receiver, as the case may be.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37705, July 13, 1999; 65 FR 47238, Aug. 1, 2000; 68 FR 45169, Aug. 1, 2003; 68 FR 74788, Dec. 24, 2003; 69 FR 51012, Aug. 17, 2004]

From the U.S. Code Online via GPO Access
[wais.access.gpo.gov]
[Laws in effect as of January 7, 2003]
[Document not affected by Public Laws enacted between
January 7, 2003 and February 12, 2003]
[CITE: 16USC971]

TITLE 16--CONSERVATION

CHAPTER 16A--ATLANTIC TUNAS CONVENTION

Sec. 971. Definitions

For the purpose of this chapter--

(1) The term ``Convention'' means the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro May 14, 1966, including any amendments or protocols which are or become effective for the United States.

(2) The term ``Commission'' means the International Commission for the Conservation of Atlantic Tunas provided for in article III of the Convention.

(3) The term ``conservation recommendation'' means any recommendation of the Commission made pursuant to Article VIII of the Convention and acted upon favorably by the Secretary of State under section 971c(a) of this title.

(4) The term ``Council'' means the Council established within the International Commission for the Conservation of Atlantic Tunas pursuant to article V of the Convention.

(5) The term ``exclusive economic zone'' means an exclusive economic zone as defined in section 1802 of this title.

(6) The term ``fishing'' means the catching, taking, or fishing for or the attempted catching, taking, or fishing for any species of fish covered by the Convention, or any activities in support thereof.

(7) The term ``fishing vessel'' means any vessel engaged in catching fish or processing or transporting fish loaded on the high seas, or any vessel outfitted for such activities.

(8) The term ``Panel'' means any panel established by the Commission pursuant to article VI of the Convention.

(9) The term ``person'' means every individual, partnership, corporation, and association subject to the jurisdiction of the United States.

(10) The term ``Secretary'' means the Secretary of Commerce.

(11) The term ``State'' includes each of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(Pub. L. 94-70, Sec. 2, Aug. 5, 1975, 89 Stat. 385; Pub. L. 94-265, title IV, Sec. 405(a), Apr. 13, 1976, 90 Stat. 361; Pub. L. 95-33, Sec. 2, May 26, 1977, 91 Stat. 173; Pub. L. 104-43, title III, Sec. 303(1), (2), Nov. 3, 1995, 109 Stat. 384; Pub. L. 105-384, title II, Sec. 202(b)(1)(A), (F), Nov. 13, 1998, 112 Stat. 3452, 3453.)

Amendments

1998--Pars. (4), (5). Pub. L. 105-384 renumbered par. (4) defining ``exclusive economic zone'' as par. (5) and made technical amendment to reference in original act which appears in text as reference to section 1802 of this title.

1995--Par. (3). Pub. L. 104-43, Sec. 303(1), added par. (3). Former par. (3) redesignated (4).

Par. (4). Pub. L. 104-43, Sec. 303(2), added par. (4) defining ``exclusive economic zone''. Former par. (4) redesignated (5).

Pub. L. 104-43, Sec. 303(1), redesignated par. (3) defining ``Council'' as (4).

Par. (5). Pub. L. 104-43, Sec. 303(2), struck out par. (5) which read as follows: ``The term `fisheries zone' means 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 outer boundary is a line drawn in such a manner that each point on it is two hundred nautical miles from the baseline from which the territorial sea is measured; or similar zones established by other parties to the Convention to the extent that such zones are recognized by the United States.''

Pub. L. 104-43, Sec. 303(1), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Pars. (6) to (11). Pub. L. 104-43, Sec. 303(1), redesignated pars. (5) to (10) as (6) to (11), respectively.

1977--Par. (4). Pub. L. 95-33 struck out the comma between ``zone'' and ``contiguous'', substituted ``two hundred'' for ``200'', and substituted a semicolon for a comma after ``is measured''.

1976--Par. (4). Pub. L. 94-265, which directed the substitution of ``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 outer 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,'' for ``the fisheries zone established pursuant to the Act of October 14, 1966 (80 Stat. 908; 16 U.S.C. 1091-1094)'', was executed by making the substitution for ``the entire zone established by the United States under the Act of October 14, 1966 (80 Stat. 908; 16 U.S.C. 1091-1094)'', to reflect the probable intent of Congress.

Effective Date of 1976 Amendment

Section 405(b) of Pub. L. 94-265 provided that the amendment made by section 405(a) of Pub. L. 94-265 to this section was to take effect Mar. 1, 1977, prior to the general amendment of title IV of Pub. L. 94-265 by Pub. L. 104-297.

Short Title of 1995 Amendment

Section 301 of title III of Pub. L. 104-43 provided that: ``This title [enacting sections 971j and 971k of this title, amending this section and sections 971b, 971c to 971e, 971h, and 971i of this title, and enacting provisions set out as a note under section 971c of this title] may be cited as the `Atlantic Tunas Convention Authorization Act of 1995'.''

Short Title

Section 1 of Pub. L. 94-70 provided: ``That this Act [enacting this chapter and provisions set out below] may be cited as the `Atlantic Tunas Convention Act of 1975'.''

Separability

Pub. L. 94-70, Sec. 13, formerly Sec. 11, Aug. 5, 1975, 89 Stat. 394; renumbered Sec. 13, Pub. L. 105-384, title II, Sec. 202(b)(1)(D), Nov. 13, 1998, 112 Stat. 3452, provided that: ``If any provision of this Act [this chapter] or the application of such provision to any circumstance or persons shall be held invalid, the validity of the remainder of the Act and the applicability of such provision to other circumstances or persons shall not be affected thereby.''

From the U.S. Code Online via GPO Access
[wais.access.gpo.gov]
[Laws in effect as of January 7, 2003]
[Document not affected by Public Laws enacted between
January 7, 2003 and February 12, 2003]
[CITE: 16USC971a]

TITLE 16--CONSERVATION

CHAPTER 16A--ATLANTIC TUNAS CONVENTION

Sec. 971a. Commissioners

(a) Appointment and number; selection of Chairman; rules of procedure; term

(1) The United States shall be represented by not more than three Commissioners who shall serve as delegates of the United States on the Commission, and who may serve on the Council and Panels of the Commission as provided for in the Convention. Such Commissioners shall be appointed by and serve at the pleasure of the President. Not more than one such Commissioner shall be a salaried employee of any State or political subdivision thereof, or the Federal Government. Individuals serving as such Commissioners shall not be considered to be Federal employees while performing such service, except for purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5 and chapter 171 of title 28. The Commissioners shall be entitled to select a Chairman and to adopt such rules of procedure as they find necessary.

(2) Of the Commissioners appointed under paragraph (1) who are not governmental employees--

(A) one shall be appointed from among individuals with knowledge and experience regarding commercial fishing in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea; and

(B) one shall be appointed from among individuals with knowledge and experience regarding recreational fishing in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea.

(3) (A) The term of a Commissioner shall be three years.

(B) An individual appointed in accordance with paragraph (2) shall not be eligible to serve more than two consecutive terms as a Commissioner.

(b) Alternate Commissioners

The Secretary of State, in consultation with the Secretary, may designate from time to time and for periods of time deemed appropriate Alternate United States Commissioners to the Commission. Any Alternate United States Commissioner may exercise at any meeting of the

Commission, Council, any Panel, or the advisory committee established pursuant to section 971b of this title, all powers and duties of a United States Commissioner in the absence of any Commissioner appointed pursuant to subsection (a) of this section for whatever reason. The number of such Alternate United States Commissioners that may be designated for any such meeting shall be limited to the number of United States Commissioners appointed pursuant to subsection (a) of this section who will not be present at such meeting.

(c) Compensation

The United States Commissioners or Alternate Commissioners, although officers of the United States while so serving, shall receive no compensation for their services as such Commissioners or Alternate Commissioners.

(d) Travel expenses

(1) The Secretary of State shall pay the necessary travel expenses of United States Commissioners, Alternate United States Commissioners, and authorized advisors in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5.

(2) The Secretary may reimburse the Secretary of State for amounts expended by the Secretary of State under this subsection.

(Pub. L. 94-70, Sec. 3, Aug. 5, 1975, 89 Stat. 385; Pub. L. 101-627, title II, Secs. 201(a), 203, Nov. 28, 1990, 104 Stat. 4459, 4460; Pub. L. 106-562, title III, Sec. 303, Dec. 23, 2000, 114 Stat. 2806.)

Amendments

2000--Subsec. (a)(1). Pub. L. 106-562 inserted before last sentence ``Individuals serving as such Commissioners shall not be considered to be Federal employees while performing such service, except for purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5 and chapter 171 of title 28.''

1990--Subsec. (a). Pub. L. 101-627, Sec. 201(a), designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (d). Pub. L. 101-627, Sec. 203, added subsec. (d).

Limitations on Appointments of Commissioners; Application to Current Commissioners

Section 201(b) of title II of Pub. L. 101-627 provided that:

``(1) Paragraph (2) of section 3(a) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971a(a)), as added by this section, shall not apply to reappointment of an individual as a United States Commissioner of the International Commission for the Conservation of Atlantic Tunas (hereinafter in this title [enacting section 971b-1 of this title, amending this section and sections 971b, 971d, and 971h of this title, and enacting provisions set out as a note below] referred to as a 'Commissioner') if that individual is serving in that position on the date of enactment of this Act [Nov. 28, 1990].

``(2) An individual serving a term as a Commissioner on the date of enactment of this Act shall not, by reason of that term of service, be ineligible under paragraph (3)(B) of section 3(a) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971a(a)), as added by this section, for reappointment as a Commissioner.''

Termination of Current Terms and Completion of Pending Appointments

Section 202 of Pub. L. 101-627 provided that: ``The term as Commissioner of each individual serving in that position on the date of enactment of this Act [Nov. 28, 1990] shall terminate March 1, 1991. Not later than that date, the President shall complete appointment (or reappointment) of individuals to serve as Commissioners on and after that date.''

From the U.S. Code Online via GPO Access
[wais.access.gpo.gov]
[Laws in effect as of January 7, 2003]
[Document not affected by Public Laws enacted between
January 7, 2003 and February 12, 2003]
[CITE: 16USC971c]

TITLE 16--CONSERVATION

CHAPTER 16A--ATLANTIC TUNAS CONVENTION

Sec. 971c. Authority of Secretary of State; cooperative
enforcement agreements

(a) Recommendations from Commission

The Secretary of State is authorized to receive on behalf of the United States, reports, requests, and other communications of the Commission, and to act thereon directly or by reference to the appropriate authorities. The Secretary of State, with the concurrence of the Secretary and, for matters relating to enforcement, the Secretary of the department in which the Coast Guard is operating, is authorized to take appropriate action on behalf of the United States with regard to recommendations received from the Commission pursuant to article VIII of the Convention. The Secretary and, when appropriate, the Secretary of the department in which the Coast Guard is operating, shall inform the Secretary of State as to what action he considers appropriate within five months of the date of the notification of the recommendation from the Commission, and again within forty-five days of the additional sixty-day period provided by the Convention if any objection is presented by another contracting party to the Convention, or within thirty days of the date of the notification of an objection made within the additional sixty-day period, whichever date shall be the later. After any notification from the Commission that an objection of the United States is to be considered as having no effect, the Secretary shall inform the Secretary of State as to what action he considers appropriate within forty-five days of the sixty-day period provided by the Convention for reaffirming objections. The Secretary of State shall take steps under the Convention to insure that a recommendation pursuant to article VIII of the Convention does not become effective for the United States prior to its becoming effective for all contracting parties conducting fisheries affected by such recommendation on a meaningful scale in terms of their effect upon the success of the conservation program, unless he determines, with the concurrence of the Secretary, and, for matters relating to enforcement, the Secretary of the department in which the Coast Guard is operating, that the purposes of the Convention would be served by allowing a recommendation to take

effect for the United States at some earlier time.

(b) Enforcement agreements

The Secretary of State, in consultation with the Secretary and the Secretary of the department in which the Coast Guard is operating, is authorized to enter into agreements with any contracting party, pursuant to paragraph 3 of article IX of the Convention, relating to cooperative enforcement of the provisions of the Convention, recommendations in force for the United States and such party or parties under the Convention, and regulations adopted by the United States and such contracting party or parties pursuant to recommendations of the Commission. Such agreements may authorize personnel of the United States to enforce measures under the Convention and under regulations of another party with respect to persons under that party's jurisdiction, and may authorize personnel of another party to enforce measures under the Convention and under United States regulations with respect to persons subject to the jurisdiction of the United States. Enforcement under such an agreement may not take place within the territorial seas or exclusive economic zone of the United States. Such agreements shall not subject persons or vessels under the jurisdiction of the United States to prosecution or assessment of penalties by any court or tribunal of a foreign country.

(Pub. L. 94-70, Sec. 5, Aug. 5, 1975, 89 Stat. 386; Pub. L. 104-43, title III, Sec. 303(3), Nov. 3, 1995, 109 Stat. 384; Pub. L. 105-384, title II, Sec. 202(b)(1)(B), Nov. 13, 1998, 112 Stat. 3452.)

Amendments

1998--Subsec. (b). Pub. L. 105-384 directed amendment identical to amendment by Pub. L. 104-43. See 1995 Amendment note below.

1995--Subsec. (b). Pub. L. 104-43 substituted ``exclusive economic zone'' for ``fisheries zone'' after ``territorial seas or'' in third sentence.

Management of Atlantic Yellowfin Tuna

Section 309(b) of Pub. L. 104-43, as amended by Pub. L. 104-297, title IV, Sec. 406, Oct. 11, 1996, 110 Stat. 3621, provided that: ``Not later than July 1, 1997, the Secretary of Commerce shall implement the recommendations of the International Commission for the Conservation of Atlantic Tunas regarding yellowfin tuna made pursuant to Article VIII of the International Convention for the Conservation of Atlantic Tunas and acted upon favorably by the Secretary of State under section 5(a) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971c(a)).''

Section Referred to in Other Sections

This section is referred to in sections 971, 971d, 971f of this title.

From the U.S. Code Online via GPO Access
[wais.access.gpo.gov]
[Laws in effect as of January 7, 2003]
[Document not affected by Public Laws enacted between
January 7, 2003 and February 12, 2003]
[CITE: 16USC971d]

TITLE 16--CONSERVATION

CHAPTER 16A--ATLANTIC TUNAS CONVENTION

Sec. 971d. Administration

- (a) Regulations; cooperation with other parties to Convention; utilization of personnel, services, and facilities for enforcement

The Secretary is authorized and directed to administer and enforce all of the provisions of the Convention, this chapter, and regulations issued pursuant thereto, except to the extent otherwise provided for in this chapter. In carrying out such functions the Secretary is authorized and directed to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and this chapter, and with the concurrence of the Secretary of State, he may cooperate with the duly authorized officials of the government of any party to the Convention. In addition, the Secretary may utilize, with the concurrence of the Secretary of the department in which the Coast Guard is operating insofar as such utilization involves enforcement at sea, with or without reimbursement and by agreement with any other Federal department or agency, or with any agency of any State, the personnel, services, and facilities of that agency for enforcement purposes with respect to any vessel in the exclusive economic zone, or wherever found, with respect to any vessel documented under the laws of the United States, and any vessel numbered or otherwise licensed under the laws of any State. When so utilized, such personnel of the States of the United States 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.

- (b) Primary enforcement responsibility

Enforcement activities at sea under the provisions of this chapter for fishing vessels subject to the jurisdiction of the United States shall be primarily the responsibility of the Secretary of the department in which the Coast Guard is operating, in cooperation with the Secretary and the United States Customs Service. The Secretary after consultation with the Secretary of the department in which the Coast Guard is operating, shall adopt such regulations as may be necessary to provide for procedures and methods of enforcement pursuant to article IX of the Convention.

- (c) Regulations and other measures to carry out Commission recommendations

(1) (A) Upon favorable action by the Secretary of State under section 971c(a) of this title on any recommendation of the Commission made pursuant to article VIII of the Convention, the Secretary shall promulgate, pursuant to this subsection, such regulations as may be necessary and appropriate to carry out such recommendation.

(B) Not later than June 30, 1991, the Secretary shall promulgate any additional regulations necessary to ensure that the United States is in full compliance with all recommendations made by the Commission that have been accepted by the United States and with other agreements under the Convention between the United States and any nation which is a party

to the Convention.

(C) Regulations promulgated under this paragraph shall, to the extent practicable, be consistent with fishery management plans prepared and implemented under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(2) To promulgate regulations referred to in paragraph (1) of this subsection, the Secretary shall publish in the Federal Register a general notice of proposed rulemaking and shall afford interested persons an opportunity to participate in the rulemaking through (A) submission of written data, views, or arguments, and (B) oral presentation at a public hearing. Such regulations shall be published in the Federal Register and shall be accompanied by a statement of the considerations involved in the issuance of the regulations, and by a statement, based on inquiries and investigations, assessing the nature and effectiveness of the measures for the implementation of the Commission's recommendations which are being or will be carried out by countries whose vessels engage in fishing the species subject to such recommendations within the waters to which the Convention applies. After publication in the Federal Register, such regulations shall be applicable to all vessels and persons subject to the jurisdiction of the United States on such date as the Secretary shall prescribe. The Secretary shall suspend at any time the application of any such regulation when, after consultation with the Secretary of State and the United States Commissioners, he determines that fishing operations in the Convention area of a contracting party for whom the regulations are effective are such as to constitute a serious threat to the achievement of the Commission's recommendations.

(3) The regulations required to be promulgated under paragraph (1) of this subsection may--

(A) select for regulation one or more of the species covered by the Convention;

(B) divide the Convention waters into areas;

(C) establish one or more open or closed seasons as to each such area;

(D) limit the size of the fish and quantity of the catch which may be taken from each area within any season during which fishing is allowed;

(E) limit or prohibit the incidental catch of a regulated species which may be retained, taken, possessed, or landed by vessels or persons fishing for other species of fish;

(F) require records of operations to be kept by any master or other person in charge of any fishing vessel;

(G) require such clearance certificates for vessels as may be necessary to carry out the purposes of the Convention and this chapter;

(H) require proof satisfactory to the Secretary that any fish subject to regulation pursuant to a recommendation of the Commission offered for entry into the United States has not been taken or retained contrary to the recommendations of the Commission made pursuant to article VIII of the Convention which have been adopted as regulations pursuant to this section;

(I) require any commercial or recreational fisherman to obtain a permit from the Secretary and report the quantity of the catch of a regulated species;

(J) require that observers be carried aboard fishing vessels for the purpose of providing statistically reliable scientific data; and

(K) impose such other requirements and provide for such other measures as the Secretary may determine necessary to implement any recommendation of the Convention or to obtain scientific data necessary to accomplish the purpose of the Convention;

except that no regulation promulgated under this section may have the effect of increasing or decreasing any allocation or quota of fish or fishing mortality level to the United States agreed to pursuant to a recommendation of the Commission.

(4) Upon the promulgation of regulations provided for in paragraph (3) of this subsection, the Secretary shall promulgate, with the concurrence of the Secretary of State and pursuant to the procedures prescribed in paragraph (2) of this subsection, additional regulations which shall become effective simultaneously with the application of the regulations provided for in paragraph (3) of this subsection, which prohibit--

(A) the entry into the United States of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the Convention area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission; and

(B) the entry into the United States, from any country when the vessels of such country are being used in the conduct of fishing operations in the Convention area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the Convention area.

(5) In the case of repeated and flagrant fishing operations in the Convention area by the vessels of any country which seriously threaten the achievement of the objectives of the Commission's recommendations, the Secretary with the concurrence of the Secretary of State, may by regulations promulgated pursuant to paragraph (2) of this subsection prohibit the entry in any form from such country of other species covered by the Convention as may be under investigation by the Commission and which were taken in the Convention area. Any such prohibition shall continue until the Secretary is satisfied that the condition warranting the prohibition no longer exists, except that all fish in any form of the species under regulation which were previously prohibited from entry shall continue to be prohibited from entry.

(6) Identification and notification.--

(A) Not later than July 1, 1996, and annually thereafter, the Secretary, in consultation with the Secretary of State, the Commissioners, and the advisory committee, shall--

(i) identify those nations whose fishing vessels are fishing, or have fished during the preceding calendar year, within the convention area in a manner or under circumstances that diminish the effectiveness of a conservation recommendation;

(ii) notify the President and the nation so identified, including an explanation of the reasons therefor; and

(iii) publish a list of those Nations identified under clause (i).

(B) In identifying those Nations, the Secretary shall consider, based on the best available information, whether those Nations have measures in place for reporting, monitoring, and enforcement, and whether those measures diminish the effectiveness of any conservation recommendation.

(7) Consultation.--Not later than 30 days after a Nation is notified under paragraph (6), the President may enter into consultations with the Government of that Nation for the purpose of obtaining an agreement that

will--

(A) effect the immediate termination and prevent the resumption of any fishing operation by vessels of that Nation within the Convention area which is conducted in a manner or under circumstances that diminish the effectiveness of the conservation recommendation;

(B) when practicable, require actions by that Nation, or vessels of that Nation, to mitigate the negative impacts of fishing operations on the effectiveness of the conservation recommendation involved, including but not limited to, the imposition of subsequent-year deductions for quota overages; and

(C) result in the establishment, if necessary, by such Nation of reporting, monitoring, and enforcement measures that are adequate to ensure the effectiveness of conservation recommendations.

(d) Recommended Commission actions regarding large-scale driftnet fishing and conservation of Atlantic swordfish

(1) It is the sense of the Congress that the Secretary, in consultation with the Secretary of State, should seek support for a recommendation by the Commission to ban large-scale driftnet fishing (as that term is defined in section 3(16) \1\ of the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1802(16)]) in the Convention area.

\1\ See References in Text note below.

(2) The Secretary, in consultation with the Secretary of State, shall request the Commission to adopt recommendations necessary for the conservation and management of Atlantic swordfish. In making the request, the Secretary shall seek the establishment of an international minimum harvest size and a reduction in harvest levels to the extent necessary to conserve the stock. Until the Commission adopts all the conservation and management measures requested by the Secretary, the Secretary, within 3 months after each annual meeting of the Commission, shall notify Congress as to the nature and results of his request. These notifications shall identify those nations not acting to conserve and manage Atlantic swordfish, and recommend measures which could be taken to achieve effective international conservation and management of the stock.

(Pub. L. 94-70, Sec. 6, Aug. 5, 1975, 89 Stat. 387; 1978 Reorg. Plan No. 2, Sec. 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3784; Pub. L. 101-627, title II, Secs. 206, 207, Nov. 28, 1990, 104 Stat. 4461; Pub. L. 104-43, title III, Secs. 303(3), 305, Nov. 3, 1995, 109 Stat. 384, 385; Pub. L. 105-384, title II, Sec. 202(b)(1)(C), (F), Nov. 13, 1998, 112 Stat. 3452, 3453.)

References in Text

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in subsec. (c)(1)(C), is Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, which is classified principally to chapter 38 (Sec. 1801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

Section 3 of the Magnuson-Stevens Fishery Conservation and Management Act, referred to in subsec. (d)(1), was subsequently amended, and section 3(16) no longer defines the term ``large-scale driftnet fishing''. However, such term is defined elsewhere in that section.

Amendments

1998--Subsec. (c) (1) (C). Pub. L. 105-384, Sec. 202(b) (1) (F), substituted ``Magnuson-Stevens Fishery'' for ``Magnuson Fishery''.

Subsecs. (c) (6) (A) (iii), (B). Pub. L. 105-384, Sec. 202(b) (1) (C), substituted ``clause (i)'' for ``subparagraph (A)'' in cl. (iii), and redesignated last sentence of subpar. (A) as subpar. (B) and realigned margin.

Subsec. (d) (1). Pub. L. 105-384, Sec. 202(b) (1) (F), substituted ``Magnuson-Stevens Fishery'' for ``Magnuson Fishery''.

1995--Subsec. (a). Pub. L. 104-43, Sec. 303(3), substituted ``exclusive economic zone'' for ``fisheries zone'' after ``any vessel in the'' in third sentence.

Subsec. (c). Pub. L. 104-43, Sec. 305(1), inserted ``and other measures'' after ``Regulations'' in heading.

Subsec. (c) (3). Pub. L. 104-43, Sec. 305(2), inserted ``or fishing mortality level'' after ``quota of fish'' in concluding provisions.

Subsec. (c) (6), (7). Pub. L. 104-43, Sec. 305(3), added pars. (6) and (7).

1990--Subsec. (c) (1). Pub. L. 101-627, Sec. 206(a), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (c) (3). Pub. L. 101-627, Sec. 206(b), added subpars. (I) to (K) and concluding provisions and struck out former subpar. (I) which read as follows: ``impose such other requirements and provide for such other measures as the Secretary may deem necessary to implement any recommendation of the Commission.''

Subsec. (d). Pub. L. 101-627, Sec. 207, amended subsec. (d) generally, substituting provisions relating to recommended Commission actions regarding large-scale driftnet fishing and conservation of Atlantic swordfish for provisions relating to Commission recommendations concerning bluefin tuna and issuance of regulations.

Transfer of Functions

``Director of the Office of Personnel Management'' substituted for ``Civil Service Commission'' in subsec. (a) pursuant to Reorg. Plan No. 2 of 1978, Sec. 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in the Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

Use of Aircraft in Atlantic Bluefin Tuna Fishing

Pub. L. 106-553, Sec. 1(a) (2) [title VI, Sec. 634], Dec. 21, 2000, 114 Stat. 2762, 2762A-114, provided that: ``None of the funds provided in this or any previous Act, or hereinafter made available to the Department of Commerce shall be available to issue or renew, for any fishing vessel, any general or harpoon category fishing permit for Atlantic bluefin tuna that would allow the vessel--

``(1) to use an aircraft to locate, or otherwise assist in fishing for, catching, or possessing Atlantic bluefin tuna; or

``(2) to fish for, catch, or possessing [sic] Atlantic bluefin tuna located by the use of an aircraft.''

Section Referred to in Other Sections

This section is referred to in sections 971e, 971j of this title.

From the U.S. Code Online via GPO Access
[wais.access.gpo.gov]
[Laws in effect as of January 7, 2003]
[Document not affected by Public Laws enacted between
January 7, 2003 and February 12, 2003]
[CITE: 16USC971e]

TITLE 16--CONSERVATION

CHAPTER 16A--ATLANTIC TUNAS CONVENTION

Sec. 971e. Violations

(a) In general

It shall be unlawful--

(1) for any person in charge of a fishing vessel or any fishing vessel subject to the jurisdiction of the United States to engage in fishing in violation of any regulation adopted pursuant to section 971d of this title; or

(2) for any person subject to the jurisdiction of the United States to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish which he knows, or should have known, were taken or retained contrary to the recommendations of the Commission made pursuant to article VIII of the Convention and adopted as regulations pursuant to section 971d of this title, without regard to the citizenship of the person or vessel which took the fish.

(b) Failure to furnish returns, records, or reports

It shall be unlawful for the master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to fail to make, keep, or furnish any catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this chapter to be made, kept, or furnished by such master or person.

(c) Refusal of request to board and inspect vessel

It shall be unlawful for the master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to refuse to permit any person authorized to enforce the provisions of this chapter and any regulations adopted pursuant thereto, to board such vessel and inspect its catch, equipment, books, documents, records, or other articles or question the persons onboard in accordance with the provisions of this chapter, or the Convention, as the case may be, or to obstruct such officials in the execution of such duties.

(d) Importation of ineligible species or species under investigation

It shall be unlawful for any person to import, in violation of any regulation adopted pursuant to section 971d(c) or (d) \1\ of this title, from any country, any fish in any form of those species subject to regulation pursuant to a recommendation of the Commission, or any fish in any form not under regulation but under investigation by the Commission, during the period such fish have been denied entry in

accordance with the provisions of section 971d(c) or (d) \1\ of this title. In the case of any fish as described in this subsection offered for entry in the United States, the Secretary shall require proof satisfactory to him that such fish is not ineligible for such entry under the terms of section 971d(c) or (d) \1\ of this title.

\1\ See References in Text note below.

(e) Sanctions

The civil penalty and permit sanctions of section 1858 of this title are hereby made applicable to violations of this section as if they were violations of section 1857 of this title.

(f) Forfeiture

All fish taken or retained in violation of subsection (a) of this section, or the monetary value thereof, may be forfeited.

(g) Applicability of other laws

All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a cargo for violation of the customs laws, the disposition of such cargo or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as such provisions of law are applicable and not inconsistent with the provisions of this chapter.

(Pub. L. 94-70, Sec. 7, Aug. 5, 1975, 89 Stat. 390; Pub. L. 104-43, title III, Sec. 306, Nov. 3, 1995, 109 Stat. 385; Pub. L. 105-384, title II, Sec. 202(b)(1)(F), Nov. 13, 1998, 112 Stat. 3453.)

References in Text

Section 971d(d) of this title, referred to in subsec. (d), was amended generally by Pub. L. 101-627, title II, Sec. 207, Nov. 28, 1990, 104 Stat. 4461. Prior to amendment, subsec. (d) related to Commission recommendations concerning bluefin tuna and issuance of regulations in that regard.

Amendments

1998--Subsec. (e). Pub. L. 105-384 made technical amendment to reference in original act which appears in text as reference to section 1858 of this title.

1995--Subsec. (e). Pub. L. 104-43 amended subsec. (e) generally, substituting present provisions for provisions establishing civil penalties for violations of this section, providing for authority of Secretary to assess, remit, or mitigate any civil penalty, providing for notice and hearing prior to assessment, and providing for civil action upon failure to pay penalty.

From the U.S. Code Online via GPO Access
[wais.access.gpo.gov]
[Laws in effect as of January 7, 2003]
[Document not affected by Public Laws enacted between
January 7, 2003 and February 12, 2003]

[CITE: 16USC971f]

TITLE 16--CONSERVATION

CHAPTER 16A--ATLANTIC TUNAS CONVENTION

Sec. 971f. Enforcement

(a) Particular powers

Any person authorized in accordance with the provisions of this chapter to enforce the provisions of this chapter and the regulations issued thereunder may--

(1) with or without a warrant, board any vessel subject to the jurisdiction of the United States and inspect such vessel and its catch and, if as a result of such inspection, he has reasonable cause to believe that such vessel or any person on board is engaging in operations in violation of this chapter or any regulations issued thereunder, he may, with or without a warrant or other process, arrest such person;

(2) arrest, with or without a warrant, any person who violates the provisions of this chapter or any regulation issued thereunder in his presence or view;

(3) execute any warrant or other process issued by an officer or court of competent jurisdiction; and

(4) seize, whenever and wherever lawfully found, all fish taken or retained by a vessel subject to the jurisdiction of the United States in violation of the provisions of this chapter or any regulations issued pursuant thereto. Any fish so seized may be disposed of pursuant to an order of a court of competent jurisdiction, or, if perishable, in a manner prescribed by regulation of the Secretary.

(b) International enforcement

To the extent authorized under the convention or by agreements between the United States and any contracting party concluded pursuant to section 971c(b) of this title for international enforcement, the duly authorized officials of such party shall have the authority to carry out the enforcement activities specified in subsection (a) of this section with respect to persons or vessels subject to the jurisdiction of the United States, and the officials of the United States authorized pursuant to this section shall have the authority to carry out the enforcement activities specified in subsection (a) of this section with respect to persons or vessels subject to the jurisdiction of such party, except that where any agreement provides for arrest or seizure of persons or vessels under United States jurisdiction it shall also provide that the person or vessel arrested or seized shall be promptly handed over to a United States enforcement officer or another authorized United States official.

(c) Bonds or stipulations

Notwithstanding the provisions of section 2464 of title 28, when a warrant of arrest or other process in rem is issued in any cause under this section, the marshal or other officer shall stay the execution of such process, or discharge any fish seized if the process has been levied, on receiving from the claimant of the fish a bond or stipulation for the value of the property with sufficient surety to be approved by a

judge of the district court having jurisdiction of the offense, conditioned to deliver the fish seized, if condemned, without impairment in value or, in the discretion of the court, to pay its equivalent value in money or otherwise to answer the decree of the court in such cause. Such bond or stipulation shall be returned to the court and judgment thereon against both the principal and sureties may be recovered in event of any breach of the conditions thereof as determined by the court. In the discretion of the accused, and subject to the direction of the court, the fish may be sold for not less than its reasonable market value at the time of seizure and the proceeds of such sale placed in the registry of the court pending judgment in the case.

(Pub. L. 94-70, Sec. 8, Aug. 5, 1975, 89 Stat. 391.)

From the U.S. Code Online via GPO Access
[wais.access.gpo.gov]
[Laws in effect as of January 7, 2003]
[Document not affected by Public Laws enacted between
January 7, 2003 and February 12, 2003]
[CITE: 16USC971g]

TITLE 16--CONSERVATION

CHAPTER 16A--ATLANTIC TUNAS CONVENTION

Sec. 971g. Cooperation in carrying out Convention

(a) Federal and State agencies; private institutions and organizations

The United States Commissioners, through the Secretary of State and with the concurrence of the agency, institution, or organization concerned, may arrange for the cooperation of agencies of the United States Government, and of State and private institutions and organizations in carrying out the provisions of article IV of the Convention.

(b) Scientific and other programs; facilities and personnel

All agencies of the Federal Government are authorized, upon the request of the Commission, to cooperate in the conduct of scientific and other programs, and to furnish facilities and personnel for the purpose of assisting the Commission in carrying out its duties under the Convention.

(c) Fishing operations and biological experiments

None of the prohibitions deriving from this chapter, or contained in the laws or regulations of any State, shall prevent the Commission from conducting or authorizing the conduct of fishing operations and biological experiments at any time for purposes of scientific investigation, or shall prevent the Commission from discharging any other duties prescribed by the Convention.

(d) State jurisdiction; preemption by Federal regulations

(1) Except as provided in paragraph (2) of this subsection, nothing in this chapter shall be construed so as to diminish or to increase the jurisdiction of any State in the territorial sea of the United States.

(2) In the event a State does not request a formal hearing and after notice by the Secretary, the regulations promulgated pursuant to this chapter to implement recommendations of the Commission shall apply within the boundaries of any State bordering on any Convention area if the Secretary determines that any such State--

(A) has not, within a reasonable period of time after the promulgation of regulations pursuant to this chapter, enacted laws or promulgated regulations which implement any such recommendation of the Commission within the boundaries of such State; or

(B) has enacted laws or promulgated regulations which (i) are less restrictive than the regulations promulgated pursuant to this chapter, or (ii) are not effectively enforced.

If a State requests the opportunity for an agency hearing on the record, the Secretary shall not apply regulations promulgated pursuant to this chapter within that State's boundaries unless the hearing record supports a determination under paragraph (A) or (B). Such regulations shall apply until the Secretary determines that the State is effectively enforcing within its boundaries measures which are not less restrictive than such regulations.

(e) Continuing review of State laws and regulations

To insure that the purposes of subsection (d) of this section are carried out, the Secretary shall undertake a continuing review of the laws and regulations of all States to which subsection (d) of this section applies or may apply and the extent to which such laws and regulations are enforced.

(Pub. L. 94-70, Sec. 9, Aug. 5, 1975, 89 Stat. 392.)

Territorial Sea of United States

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

From the U.S. Code Online via GPO Access
[wais.access.gpo.gov]
[Laws in effect as of January 7, 2003]
[Document not affected by Public Laws enacted between
January 7, 2003 and February 12, 2003]
[CITE: 16USC971h]

TITLE 16--CONSERVATION

CHAPTER 16A--ATLANTIC TUNAS CONVENTION

Sec. 971h. Authorization of appropriations

There are authorized to be appropriated to carry out this chapter, including use for payment of the United States share of the joint expenses of the Commission as provided in Article X of the Convention, the following sums:

(1) For fiscal year 1995, \$4,103,000, of which \$50,000 are authorized in the aggregate for the advisory committee established under section 971b of this title and the species working groups established under section 971b-1 of this title, and \$2,890,000 are authorized for research activities under this chapter and the Act of September 4, 1980 (16 U.S.C. 971i).

(2) For fiscal year 1996, \$5,453,000, of which \$50,000 are authorized in the aggregate for such advisory committee and such working groups, and \$4,240,000 are authorized for such research activities.

(3) For fiscal year 1997, \$5,465,000 of which \$62,000 are authorized in the aggregate for such advisory committee and such working groups, and \$4,240,000 are authorized for such research activities.

(4) For each of fiscal years 1998, 1999, 2000, and 2001, \$5,465,000 of which \$75,000 are authorized in the aggregate for such advisory committee and such working groups, and \$4,240,000 are authorized for such research activities.

(Pub. L. 94-70, Sec. 10, Aug. 5, 1975, 89 Stat. 393; Pub. L. 95-33, Sec. 1, May 26, 1977, 91 Stat. 173; Pub. L. 96-339, Sec. 1(2), Sept. 4, 1980, 94 Stat. 1069; Pub. L. 98-44, title I, Sec. 101, July 12, 1983, 97 Stat. 216; Pub. L. 99-659, title IV, Sec. 404, Nov. 14, 1986, 100 Stat. 3737; Pub. L. 101-627, title II, Sec. 208, Nov. 28, 1990, 104 Stat. 4462; Pub. L. 104-43, title III, Sec. 307, Nov. 3, 1995, 109 Stat. 386; Pub. L. 105-384, title II, Sec. 202(a), Nov. 13, 1998, 112 Stat. 3452.)

References in Text

Act of September 4, 1980, referred to in par. (1), is Pub. L. 96-339, Sept. 4, 1980, 94 Stat. 1069, which enacted sections 971i and 1827 of this title and amended this section and section 971b of this title. For complete classification of this Act to the Code, see Tables.

Amendments

1998--Par. (4). Pub. L. 105-384 substituted ``For each of fiscal years 1998, 1999, 2000, and 2001,''' for ``For fiscal year 1998,'''.

1995--Pub. L. 104-43 amended section generally, substituting provisions authorizing appropriations for fiscal years 1995 to 1998 for provisions authorizing appropriations for fiscal years 1989 to 1993.

1990--Pub. L. 101-627 amended section generally, substituting provisions authorizing appropriations for fiscal years 1989 to 1993 for provisions authorizing appropriations for fiscal years 1986 to 1989 and striking out provisions relating to use of sums for travel expenses.

1986--Pub. L. 99-659 substituted authorization of appropriations for fiscal years 1986 through 1989 for former authorization of appropriations for fiscal year 1976, the period beginning July 1, 1976, and ending Sept. 30, 1976, and fiscal years 1977 through 1986.

1983--Pub. L. 98-44 authorized appropriations for fiscal years 1984 through 1986.

1980--Pub. L. 96-339 authorized appropriations for fiscal years 1981 through 1983.

1977--Pub. L. 95-33 authorized appropriations for fiscal years 1978 through 1980.

From the U.S. Code Online via GPO Access

[wais.access.gpo.gov]

[Laws in effect as of January 7, 2003]

[Document not affected by Public Laws enacted between

January 7, 2003 and February 12, 2003]

[CITE: 16USC971i]

CHAPTER 16A--ATLANTIC TUNAS CONVENTION

Sec. 971i. Research on Atlantic highly migratory species

(a) Omitted

(b) Highly migratory species research and monitoring

(1) Within 6 months after November 3, 1995, the Secretary of Commerce, in cooperation with the advisory committee established under section 4 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971b) and in consultation with the United States Commissioners on the International Commission for the Conservation of Atlantic Tunas (referred to elsewhere in this section as the ``Commission'') and the Secretary of State, shall develop and implement a comprehensive research and monitoring program to support the conservation and management of Atlantic bluefin tuna and other highly migratory species that shall--

- (A) identify and define the range of stocks of highly migratory species in the Atlantic Ocean, including Atlantic bluefin tuna; and
- (B) provide for appropriate participation by nations which are members of the Commission.

(2) The program shall provide for, but not be limited to--

- (A) statistically designed cooperative tagging studies;
- (B) genetic and biochemical stock analyses;
- (C) population censuses carried out through aerial surveys of fishing grounds and known migration areas;
- (D) adequate observer coverage and port sampling of commercial and recreational fishing activity;
- (E) collection of comparable real-time data on commercial and recreational catches and landings through the use of permits, logbooks, landing reports for charter operations and fishing tournaments, and programs to provide reliable reporting of the catch by private anglers;
- (F) studies of the life history parameters of Atlantic bluefin tuna and other highly migratory species;
- (G) integration of data from all sources and the preparation of data bases to support management decisions; and
- (H) other research as necessary.

(3) In developing a program under this section, the Secretary shall--

- (A) ensure that personnel and resources of each regional research center shall have substantial participation in the stock assessments and monitoring of highly migratory species that occur in the region;
- (B) provide for comparable monitoring of all United States fishermen to which the Atlantic Tunas Convention Act of 1975 applies with respect to effort and species composition of catch and discards;
- (C) consult with relevant Federal and State agencies, scientific and technical experts, commercial and recreational fishermen, 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; and
- (D) through the Secretary of State, encourage other member nations to adopt a similar program.

title III, Sec. 302(b), Nov. 3, 1995, 109 Stat. 382; Pub. L. 105-384, title II, Sec. 202(b)(2), Nov. 13, 1998, 112 Stat. 3453.)

References in Text

The Atlantic Tunas Convention Act of 1975, referred to in subsec. (b)(3)(B), is Pub. L. 94-70, Aug. 5, 1975, 89 Stat. 385, as amended, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 971 of this title and Tables.

Codification

Subsection (a), which required the Secretary of Commerce to prepare and submit to Congress a biennial report on the level of taking of bluefin tuna by United States fishermen in the Convention area as defined in Article I of the International Convention for the Conservation of Atlantic Tunas, the status of bluefin tuna stocks within the Convention area and the trends in their population level, and related information resulting from implementation of the observer program under section 1827 of this title, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 50 of House Document No. 103-7.

Section was not enacted as part of the Atlantic Tunas Convention Act of 1975 which comprises this chapter.

Amendments

1998--Subsec. (b)(3)(B). Pub. L. 105-384 inserted ``of 1975'' after ``Act''.

1995--Pub. L. 104-43 amended section catchline generally, designated existing provisions as subsec. (a), inserted heading, struck out last sentence which read as follows: ``There are authorized to be appropriated such sums as may be necessary to carry out this section.'', and added subsec. (b).

From the U.S. Code Online via GPO Access
[wais.access.gpo.gov]
[Laws in effect as of January 7, 2003]
[Document not affected by Public Laws enacted between
January 7, 2003 and February 12, 2003]
[CITE: 16USC971j]

TITLE 16--CONSERVATION

CHAPTER 16A--ATLANTIC TUNAS CONVENTION

Sec. 971j. Annual report

Not later than April 1, 1996, and annually thereafter, the Secretary shall prepare and transmit to the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report, that--

(1) details for the previous 10-year period the catches and exports to the United States of highly migratory species (including tunas, swordfish, marlin and sharks) from Nations fishing on Atlantic stocks of such species that are subject to management by

the Commission;

(2) identifies those fishing Nations whose harvests are inconsistent with conservation and management recommendations of the Commission;

(3) describes reporting requirements established by the Secretary to ensure that imported fish products are in compliance with all international management measures, including minimum size requirements, established by the Commission and other international fishery organizations to which the United States is a party; and

(4) describes actions taken by the Secretary under section 971d of this title.

(Pub. L. 94-70, Sec. 11, as added Pub. L. 104-43, title III, Sec. 308, Nov. 3, 1995, 109 Stat. 386; amended Pub. L. 105-384, title II, Sec. 202(b)(1)(E), Nov. 13, 1998, 112 Stat. 3453.)

Prior Provisions

A prior section 11 of Pub. L. 94-70 was renumbered section 13 and is set out as a Separability note under section 971 of this title.

Amendments

1998--Pub. L. 105-384 made technical amendment to style of heading and section designation in original act.

From the U.S. Code Online via GPO Access

[wais.access.gpo.gov]

[Laws in effect as of January 7, 2003]

[Document not affected by Public Laws enacted between

January 7, 2003 and February 12, 2003]

[CITE: 16USC971k]

TITLE 16--CONSERVATION

CHAPTER 16A--ATLANTIC TUNAS CONVENTION

Sec. 971k. Savings clause

Nothing in this chapter shall have the effect of diminishing the rights and obligations of any Nation under Article VIII(3) of the Convention.

(Pub. L. 94-70, Sec. 12, as added Pub. L. 104-43, title III, Sec. 308, Nov. 3, 1995, 109 Stat. 387; amended Pub. L. 105-384, title II, Sec. 202(b)(1)(E), Nov. 13, 1998, 112 Stat. 3453.)

Amendments

1998--Pub. L. 105-384 made technical amendment to style of heading and section designation in original act.