the fishery, or 50 percent of the permitted allocation of the fishery, who participated in the fishery.'' for ''a two-thirds majority of the participants voting.''

Subsec. (d)(2)(C). Pub. L. 109–479, § 112(a)(12), substituted ''establish, unless the Secretary determines that such fees should be collected from the seller;'' for ''establish;''.

Subsec. (e). Pub. L. 109–479, § 112(a)(13), added subsec. (e) and struck out former subsec. (e) which related to implementation plan.

EFFECTIVE DATE

Pub. L. 109–479, title I, § 112(b), Jan. 12, 2007, 120 Stat. 3601, provided that: ''Sections 116, 203, 204, 205, and 206 of the Sustainable Fisheries Act [Pub. L. 104–297, see Tables for classification] are deemed to have added sections 312, 402, 403, 404, and 405 [16 U.S.C. 1861a, 1881a to 1881d], respectively to the Act [Pub. L. 94–265] as of the date of enactment of the Sustainable Fisheries Act [Oct. 11, 1996].''

STUDY OF FEDERAL INVESTMENT IN FISHERIES

Pub. L. 104–297, title I, § 116(b), Oct. 11, 1996, 110 Stat. 3603, as amended by Pub. L. 104–208, div. A, title I, § 101(a) [title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009–41, required the Secretary of Commerce to establish a task force comprised of interested parties to study and report to Congress within 2 years of Oct. 11, 1996, on the role of the Federal Government in subsidizing the expansion and contraction of fishing capacity in fishing fleets managed under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) and otherwise influencing the aggregate capital investments in fisheries.

§ 1861b. Fisheries enforcement plans and reporting

(a) Fisheries enforcement plans

In preparing the Coast Guard's annual fisheries enforcement plan, the Commandant of the Coast Guard shall consult with the Under Secretary of Commerce for Oceans and Atmosphere and with State and local enforcement authorities.

(b) Fishery patrols

Prior to undertaking fisheries patrols, the Commandant of the Coast Guard shall notify the Under Secretary of Commerce for Oceans and Atmosphere and appropriate State and local enforcement authorities of the projected dates for such patrols.

(c) Annual summary

The Commandant of the Coast Guard shall prepare and make available to the Under Secretary of Commerce for Oceans and Atmosphere, State and local enforcement entities, and other relevant stakeholders, an annual summary report of fisheries enforcement activities for the preceding year, including a summary of the number of patrols, law enforcement actions taken, and resource hours expended.

(Pub. L. 108–293, title II, § 224, Aug. 9, 2004, 118 Stat. 1040.)

CODIFICATION

Section was enacted as part of the Coast Guard and Maritime Transportation Act of 2004, and not as part of the Magnuson-Stevens Fishery Conservation and Management Act which comprises this chapter.

TERMINATION OF REPORTING REQUIREMENT

For provision terminating reporting requirement under this section, see section 4(b) of Pub. L. 111–207, set out as a Combination of Fisheries Enforcement Plans and Foreign Fishing Incursion Reports note under section 1828 of this title.

§ 1862. North Pacific fisheries conservation

(a) In general

The North Pacific Council may prepare, in consultation with the Secretary, a fisheries research plan for any fishery under the Council's jurisdiction except a salmon fishery which—

(1) requires that observers be stationed on fishing vessels engaged in the catching, taking, or harvesting of fish and on United States fish processors fishing for or processing species under the jurisdiction of the Council, including the Northern Pacific halibut fishery, for the purpose of collecting data necessary for the conservation, management, and scientific understanding of any fisheries under the Council's jurisdiction; and

(2) establishes a system, or system,[1] of fees, which may vary by fishery, management area, or observer coverage level, to pay for the cost of implementing the plan.

(b) Standards

(1) Any plan or plan amendment prepared under this section shall be reasonably calculated to—

(A) gather reliable data, by stationing observers on all or a statistically reliable sample of the fishing vessels and United States fish processors included in the plan, necessary for the conservation, management, and scientific understanding of the fisheries covered by the plan;

(B) be fair and equitable to all vessels and processors;

(C) be consistent with applicable provisions of law; and

(D) take into consideration the operating requirements of the fisheries and the safety of observers and fishermen.

(2) Any system of fees established under this section shall—

(A) provide that the total amount of fees collected under this section not exceed the combined cost of (i) stationing observers, or electronic monitoring systems, on board fishing vessels and United States fish processors, (ii) the actual cost of inputting collected data, and (iii) assessments necessary for a risk-sharing pool implemented under subsection (e) of this section, less any amount received for such purpose from another source or from an existing surplus in the North Pacific Fishery Observer Fund established in subsection (d) of this section;

(B) be fair and equitable to all participants in the fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(C) provide that fees collected not be used to pay any costs of administrative overhead or other costs not directly incurred in carrying out the plan;

(D) not be used to offset amounts authorized under other provisions of law;

[1] So in original.

(E) be expressed as a fixed amount reflecting actual observer costs as described in subparagraph (A) or a percentage, not to exceed 2 percent, of the unprocessed ex-vessel value of fish and shellfish harvested under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(F) be assessed against some or all fishing vessels and United States fish processors, including those not required to carry an observer or an electronic monitoring system under the plan, participating in fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(G) provide that fees collected will be deposited in the North Pacific Fishery Observer Fund established under subsection (d) of this section;

(H) provide that fees collected will only be used for implementing the plan established under this section;

(I) provide that fees collected will be credited against any fee for stationing observers or electronic monitoring systems on board fishing vessels and United States fish processors and the actual cost of inputting collected data to which a fishing vessel or fish processor is subject under section 1854(d) of this title; and

(J) meet the requirements of section 9701(b) of title 31.

(c) Action by Secretary

(1) Within 60 days after receiving a plan or plan amendment from the North Pacific Council under this section, the Secretary shall review such plan or plan amendment and either (A) remand such plan or plan amendment to the Council with comments if it does not meet the requirements of this section, or (B) publish in the Federal Register proposed regulations for implementing such plan or plan amendment.

(2) During the 60-day public comment period, the Secretary shall conduct a public hearing in each State represented on the Council for the purpose of receiving public comments on the proposed regulations.

(3) Within 45 days of the close of the public comment period, the Secretary, in consultation with the Council, shall analyze the public comment received and publish final regulations for implementing such plan.

(4) If the Secretary remands a plan or plan amendment to the Council for failure to meet the requirements of this section, the Council may resubmit such plan or plan amendment at any time after taking action the Council believes will address the defects identified by the Secretary. Any plan or plan amendment resubmitted to the Secretary will be treated as an original plan submitted to the Secretary under paragraph (1) of this subsection.

(d) Fishery Observer Fund

There is established in the Treasury a North Pacific Fishery Observer Fund. The Fund shall be available, without appropriation or fiscal year limitation, only to the Secretary for the purpose of carrying out the provisions of this section, subject to the restrictions in subsection (b)(2) of this section. The Fund shall consist of all monies deposited into it in accordance with this section. Sums in the Fund that are not currently needed for the purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(e) Special provisions regarding observers

(1) The Secretary shall review—

(A) the feasibility of establishing a risk sharing pool through a reasonable fee, subject to the limitations of subsection (b)(2)(E) of this section, to provide coverage for vessels and owners against liability from civil suits by observers, and

(B) the availability of comprehensive commercial insurance for vessel and owner liability against civil suits by observers.

(2) If the Secretary determines that a risk sharing pool is feasible, the Secretary shall establish such a pool, subject to the provisions of subsection (b)(2) of this section, unless the Secretary determines that—

(A) comprehensive commercial insurance is available for all fishing vessels and United States fish processors required to have observers under the provisions of this section, and

(B) such comprehensive commercial insurance will provide a greater measure of coverage at a lower cost to each participant.

(f) Bycatch reduction

In implementing section 1853(a)(11) of this title and this section, the North Pacific Council shall submit conservation and management measures to lower, on an annual basis for a period of not less than four years, the total amount of economic discards occurring in the fisheries under its jurisdiction.

(g) Bycatch reduction incentives

(1) Notwithstanding section 1854(d) of this title, the North Pacific Council may submit, and the Secretary may approve, consistent with the provisions of this chapter, a system of fines in a fishery to provide incentives to reduce bycatch and bycatch rates; except that such fines shall not exceed $25,000 per vessel per season. Any fines collected shall be deposited in the North Pacific Fishery Observer Fund, and may be made available by the Secretary to offset costs related to the reduction of bycatch in the fishery from which such fines were derived, including conservation and management measures and research, and to the State of Alaska to offset costs incurred by the State in the fishery from which such penalties were derived or in fisheries in which the State is directly involved in management or enforcement and which are directly affected by the fishery from which such penalties were derived.

(2)(A) Notwithstanding section 1853(d) of this title, and in addition to the authority provided in section 1853(b)(10) of this title, the North Pacific Council may submit, and the Secretary may approve, conservation and management measures which provide allocations of regulatory discards to individual fishing vessels as an incentive to reduce per vessel bycatch and bycatch rates in a fishery, *Provided*, That—

(i) such allocations may not be transferred for monetary consideration and are made only on an annual basis; and

(ii) any such conservation and management measures will meet the requirements of sub-

section (h) and will result in an actual reduction in regulatory discards in the fishery.

(B) The North Pacific Council may submit restrictions in addition to the restriction imposed by clause (i) of subparagraph (A) on the transferability of any such allocations, and the Secretary may approve such recommendation.

(h) Catch measurement

(1) By June 1, 1997 the North Pacific Council shall submit, and the Secretary may approve, consistent with the other provisions of this chapter, conservation and management measures to ensure total catch measurement in each fishery under the jurisdiction of such Council. Such measures shall ensure the accurate enumeration, at a minimum, of target species, economic discards, and regulatory discards.

(2) To the extent the measures submitted under paragraph (1) do not require United States fish processors and fish processing vessels (as defined in chapter 21 of title 46) to weigh fish, the North Pacific Council and the Secretary shall submit a plan to the Congress by January 1, 1998, to allow for weighing, including recommendations to assist such processors and processing vessels in acquiring necessary equipment, unless the Council determines that such weighing is not necessary to meet the requirements of this subsection.

(i) Full retention and utilization

(1) The North Pacific Council shall submit to the Secretary by October 1, 1998 a report on the advisability of requiring the full retention by fishing vessels and full utilization by United States fish processors of economic discards in fisheries under its jurisdiction if such economic discards, or the mortality of such economic discards, cannot be avoided. The report shall address the projected impacts of such requirements on participants in the fishery and describe any full retention and full utilization requirements that have been implemented.

(2) The report shall address the advisability of measures to minimize processing waste, including standards setting minimum percentages which must be processed for human consumption. For the purpose of the report, ''processing waste'' means that portion of any fish which is processed and which could be used for human consumption or other commercial use, but which is not so used.

(j) Bering Sea and Aleutian Islands crab rationalization

(1) By not later than January 1, 2005, the Secretary shall approve and hereafter[2] implement by regulation the Voluntary Three-Pie Cooperative Program for crab fisheries of the Bering Sea and Aleutian Islands approved by the North Pacific Fishery Management Council between June 2002 and April 2003, and all trailing amendments including those reported to Congress on May 6, 2003. This section shall not preclude the Secretary from approving by January 1, 2005, and implementing any subsequent program amendments approved by the Council.

(2) Notwithstanding any other provision of this chapter, in carrying out paragraph (1) the Secretary shall approve all parts of the Program referred to in such paragraph. Further, no part of such Program may be implemented if, as approved by the North Pacific Fishery Management Council, individual fishing quotas, processing quotas, community development quota allocation, voluntary cooperatives, binding arbitration, regional landing and processing requirements, community protections, economic data collection, or the loan program for crab fishing vessel captains and crew members, is invalidated subject to a judicial determination not subject to judicial appeal. If the Secretary determines that a processor has leveraged its Individual Processor Quota shares to acquire a harvesters open-delivery ''B shares'', the processor's Individual Processor Quota shares shall be forfeited.

(3) Subsequent to implementation pursuant to paragraph (1), the Council may submit and the Secretary may implement changes to or repeal of conservation and management measures, including measures authorized in this section, for crab fisheries of the Bering Sea and Aleutian Islands in accordance with applicable law, including this chapter as amended by this subsection, to achieve on a continuing basis the purposes identified by the Council.

(4) The loan program referred to in paragraph (2) shall be carried out pursuant to the authority of sections 53735 and 53702(b) of title 46.

(5) For purposes of implementing this section $1,000,000 shall be made available each year until fully implemented from funds otherwise made available to the National Marine Fisheries Service for Alaska fisheries activities.

(6) Nothing in this chapter shall constitute a waiver, either express or implied, of the antitrust laws of the United States. The Secretary, in consultation with the Department of Justice and the Federal Trade Commission, shall develop and implement a mandatory information collection and review process to provide any and all information necessary for the Department of Justice and the Federal Trade Commission to determine whether any illegal acts of anti-competition, anti-trust, or price collusion have occurred among persons receiving individual processing quotas under the Program. The Secretary may revoke any individual processing quota held by any person found to have violated a provision of the antitrust laws of the United States.

(7) An individual processing quota issued under the Program shall be considered a permit for the purposes of sections 1857, 1858, and 1859 of this title, and may be revoked or limited at any time in accordance with this chapter. Issuance of an individual processing quota under the program shall not confer any right of compensation to the holder of such individual processing quota if it is revoked or limited and shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is purchased from an individual fishing quota holder.

(8) The restriction on the collection of economic data in section 1853 of this title shall not apply with respect to any fish processor who is eligible for, or who has received, individual processing quota under the Program. The restriction on the disclosure of information in section 1881a(b)(1) of this title shall not apply when

[2] See References in Text note below.

the information is used to determine eligibility for or compliance with an individual processing quota program.

(9) The provisions of sections 1858, 1860, and 1861 of this title shall apply to the processing facilities and fish products of any person holding individual processing quota, and the provisions of subparagraphs (D), (E), and (L) of section 1857(*l*)[3] of this title shall apply to any facility owned or controlled by a person holding individual processing quota.

(Pub. L. 94–265, title III, § 313, as added Pub. L. 101–627, title I, § 118(a), Nov. 28, 1990, 104 Stat. 4457; amended Pub. L. 102–582, title IV, § 404, Nov. 2, 1992, 106 Stat. 4909; Pub. L. 104–297, title I, § 117(a), Oct. 11, 1996, 110 Stat. 3603; Pub. L. 108–199, div. B, title VIII, § 801, Jan. 23, 2004, 118 Stat. 108; Pub. L. 109–479, title II, § 214, Jan. 12, 2007, 120 Stat. 3619.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (g)(1), (h)(1), and (j)(2), (3), (6), (7), was in the original ''this Act'', meaning Pub. L. 94–265, Apr. 13, 1976, 90 Stat. 331, as amended, known as the Magnuson-Stevens Fishery Conservation and Management Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

Hereafter, referred to in subsec. (j)(1), probably means on and after the date of enactment of Pub. L. 108–199, which enacted subsec. (j) of this section and was approved Jan. 23, 2004.

CODIFICATION

In subsec. (j)(4), ''sections 53735 and 53702(b) of title 46'' substituted for ''sections 1111 and 1112 of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f, 1279g)'' on authority of Pub. L. 109–304, § 18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted sections 53702 and 53735 of Title 46, Shipping.

AMENDMENTS

2007—Subsec. (a). Pub. L. 109–479, § 214(1), substituted ''any fishery under the Council's jurisdiction except a salmon fishery'' for ''all fisheries under the Council's jurisdiction except salmon fisheries'' in introductory provisions.

Subsec. (a)(2). Pub. L. 109–479, § 214(2), added par. (2) and struck out former par. (2) which read as follows: ''establishes a system of fees to pay for the costs of implementing the plan.''

Subsec. (b)(2)(A). Pub. L. 109–479, § 214(3), substituted ''observers, or electronic monitoring systems,'' for ''observers''.

Subsec. (b)(2)(E). Pub. L. 109–479, § 214(4), inserted ''a fixed amount reflecting actual observer costs as described in subparagraph (A) or'' after ''expressed as''.

Subsec. (b)(2)(F). Pub. L. 109–479, § 214(5), (6), inserted ''some or'' after ''against'' and ''or an electronic monitoring system'' after ''observer''.

Subsec. (b)(2)(I), (J). Pub. L. 109–479, § 214(7), (8), added subpar. (I) and redesignated former subpar. (I) as (J).

2004—Subsec. (j). Pub. L. 108–199 added subsec. (j).

1996—Pub. L. 104–297, § 117(a)(1), substituted ''conservation'' for ''research plan'' in section catchline.

Subsec. (a). Pub. L. 104–297, § 117(a)(2), substituted ''North Pacific Council'' for ''North Pacific Fishery Management Council'' in introductory provisions.

Subsecs. (f) to (i). Pub. L. 104–297, § 117(a)(3), added subsecs. (f) to (i).

1992—Subsec. (b)(2)(E). Pub. L. 102–582 substituted ''2 percent, of the unprocessed ex-vessel'' for ''one percentum, of the''.

[3] So in original. Probably should be section ''1857(1)''.

§ 1863. Northwest Atlantic Ocean Fisheries Reinvestment Program

(a) Program

(1) Not later than October 1, 1993, the Secretary shall establish a Northwest Atlantic Ocean Fisheries Reinvestment Program for the purposes of—

(A) promoting development of commercial fisheries and markets for underutilized species of the northwest Atlantic Ocean;

(B) developing alternative fishing opportunities for participants in the New England groundfish fishery;

(C) providing technical support and assistance to United States fishermen and fish processors to improve the value-added processing of underutilized species and to make participation in fisheries for underutilized species of the northwest Atlantic Ocean economically viable;

(D) creating new economic opportunities through the improved processing and expanded use of fish waste; and

(E) helping to restore overfished New England groundfish stocks through aquaculture or hatchery programs.

(2) CONSULTATION.—In establishing and implementing the Northwest Fisheries Reinvestment Program, the Secretary shall consult with representatives of the commercial fishing industry, the seafood processing industry, and the academic community (including the National Sea Grant Program).

(3) ACTIVITIES UNDER PROGRAM.—Subject to the availability of appropriations, the Secretary shall award contracts, grants and other financial assistance to United States citizens to carry out the purposes of subsection[1] (1), under the terms and conditions provided in section 713c–3(c) of title 15, except that, in making awards under this section for projects involving participation in fisheries for underutilized species, the Secretary shall give the highest priority to a person who owns or operates a fishing vessel permitted under this chapter to participate in the New England groundfish fishery who agrees to surrender that permit to the Secretary during the duration of the contract, grant or other assistance.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 for each of fiscal years 1993 through 1999 to carry out the purposes of this section. For fiscal year 1993 no more than $1,000,000, and for fiscal year 1994 no more than $2,000,000, of such funds may be provided from monies made available under section 713c–3(b) of title 15.

(b) Assistance of other agencies

The Secretary shall actively seek the assistance of other Federal agencies in the development of fisheries for underutilized species of the northwest Atlantic Ocean, including, to the extent permitted by other applicable laws, assistance from the Secretary of Agriculture in including such underutilized species as agricultural commodities in the programs of the Foreign Agricultural Service for which amounts are

[1] So in original. Probably should be ''paragraph''.