

EFFECTIVE DATE

Section effective Mar. 1, 1977, see section 312 of Pub. L. 94-265, formerly set out as a note under section 1857 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

FISHERIES ENFORCEMENT ASSET FORFEITURE FUND AND SANCTUARIES ENFORCEMENT ASSET FORFEITURE FUND

Pub. L. 112-55, div. B, title I, §§110, 111, Nov. 18, 2011, 125 Stat. 602, provided that:

“SEC. 110. There is established in the Treasury a non-interest bearing fund to be known as the ‘Fisheries Enforcement Asset Forfeiture Fund’, which shall consist of all sums received as fines, penalties, and forfeitures of property for violations of any provisions of 16 U.S.C. chapter 38 or of any other marine resource law enforced by the Secretary of Commerce, including the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.) and with the exception of collections pursuant to 16 U.S.C. 1437, which are currently deposited in the Operations, Research, and Facilities account: *Provided*, That all unobligated balances that have been collected pursuant to 16 U.S.C. 1861 or any other marine resource law enforced by the Secretary of Commerce with the exception of 16 U.S.C. 1437 shall be transferred from the Operations, Research, and Facilities account into the Fisheries Enforcement Asset Forfeiture Fund and shall remain available until expended.

“SEC. 111. There is established in the Treasury a non-interest bearing fund to be known as the ‘Sanctuaries Enforcement Asset Forfeiture Fund’, which shall consist of all sums received as fines, penalties, and forfeitures of property for violations of any provisions of 16 U.S.C. chapter 38, which are currently deposited in the Operations, Research, and Facilities account: *Provided*, That all unobligated balances that have been collected pursuant to 16 U.S.C. 1437 shall be transferred from the Operations, Research, and Facilities account into the Sanctuaries Enforcement Asset Forfeiture Fund and shall remain available until expended.”

ACTION AGAINST VESSELS AND VESSEL OWNERS ENGAGED IN ILLEGAL, UNREPORTED, OR UNREGULATED FISHING

Pub. L. 110-161, div. B, title I, §113, Dec. 26, 2007, 121 Stat. 1896, provided that:

“(a) The Secretary of Commerce may—

“(1) develop, maintain, and make public a list of vessels and vessel owners engaged in illegal, unreported, or unregulated fishing, including vessels or vessel owners identified by an international fishery management organization, whether or not the United States is a party to the agreement establishing such organization; and

“(2) take appropriate action against listed vessels and vessel owners, including action against fish, fish parts, or fish products from such vessels, in accordance with applicable United States law and consistent with applicable international law, including principles, rights, and obligations established in applicable international fishery management and trade agreements.

“(b) Action taken by the Secretary under subsection (a)(2) that include measures to restrict use of or access to ports or port services shall apply to all ports of the United States and its territories.

“(c) The Secretary may promulgate regulations to implement this section.”

INTEGRATION OF VESSEL MONITORING SYSTEM DATA

Pub. L. 109-241, title VIII, §803, July 11, 2006, 120 Stat. 563, provided that: “The Secretary of the department in which the Coast Guard is operating shall integrate vessel monitoring system data into its maritime operations databases for the purpose of improving monitoring and enforcement of Federal fisheries laws and work with the Under Secretary of Commerce for Oceans and Atmosphere to ensure effective use of such data for monitoring and enforcement.”

AGREEMENT TO MAKE MORE EFFECTIVE ENFORCEMENT OF DOMESTIC LAWS AND INTERNATIONAL AGREEMENTS

Pub. L. 102-582, title II, §202, Nov. 2, 1992, 106 Stat. 4905, provided that not later than six months after Nov. 2, 1992, the Secretary of the department in which the Coast Guard is operating, the Secretary of Commerce, and the Secretary of Defense were to enter into an agreement under subsec. (a) of this section to make more effective the enforcement of domestic laws and international agreements that conserve and manage living marine resources of the United States.

§ 1861a. Transition to sustainable fisheries

(a) Fishery resource disaster relief

(1) Definitions

In this subsection:

(A) Allowable cause

The term “allowable cause” means a natural cause, discrete anthropogenic cause, or undetermined cause, including a cause that occurred not more than 5 years prior to the date of a request for a fishery resource disaster determination that affected such applicable fishery.

(B) Anthropogenic cause

The term “anthropogenic cause” means an anthropogenic event, such as an oil spill or spillway opening—

(i) that could not have been addressed or prevented by fishery management measures; and

(ii) that is otherwise beyond the control of fishery managers to mitigate through conservation and management measures, including regulatory restrictions imposed as a result of judicial action or to protect human health or marine animals, plants, or habitats.

(C) Fishery resource disaster

The term “fishery resource disaster” means a disaster that is determined by the Secretary in accordance with this subsection and—

(i) is an unexpected large decrease in fish stock biomass or other change that results in significant loss of access to the fishery resource, which may include loss of fishing vessels and gear for a substantial period of time and results in significant revenue loss or negative subsistence impact due to an allowable cause; and

(ii) does not include—

(I) reasonably predictable, foreseeable, and recurrent fishery cyclical variations in species distribution or stock abundance; or

(II) reductions in fishing opportunities resulting from conservation and management measures taken pursuant to this chapter.

(D) Indian Tribe

The term “Indian Tribe” has the meaning given such term in section 5130 of title 25, and the term “Tribal” means of or pertaining to such an Indian tribe.

(E) Natural cause

The term “natural cause”—

- (i) means a weather, climatic, hazard, or biology-related event, such as—
 - (I) a hurricane;
 - (II) a flood;
 - (III) a harmful algal bloom;
 - (IV) a tsunami;
 - (V) a hypoxic zone;
 - (VI) a drought;
 - (VII) El Niño effects on water temperature;
 - (VIII) a marine heat wave; or
 - (IX) disease; and
- (ii) does not mean a normal or cyclical variation in a species distribution or stock abundance.

(F) 12-month revenue loss

The term “12-month revenue loss” means the percentage reduction, as applicable, in commercial, charter, headboat, or processor revenue for the affected fishery for the 12 months during which the fishery resource disaster occurred, when compared to average annual revenue in the most recent 5 years when no fishery resource disaster occurred or equivalent for stocks with cyclical life histories.

(G) Undetermined cause

The term “undetermined cause” means a cause in which the current state of knowledge does not allow the Secretary to identify the exact cause, and there is no current conclusive evidence supporting a possible cause of the fishery resource disaster.

(2) General authority**(A) In general**

The Secretary shall have the authority to determine the existence, extent, and beginning and end dates of a fishery resource disaster under this subsection in accordance with this subsection.

(B) Availability of funds

After the Secretary determines that a fishery resource disaster has occurred, the Secretary is authorized to make sums available, from funds appropriated for such purposes, to be used by the affected State, Indian Tribe, or interstate marine fisheries commission, or by the Secretary in cooperation with the affected State, Indian Tribe, or interstate marine fisheries commission.

(C) Savings clause

The requirements under this paragraph and paragraphs (3), (4), and (5) shall take effect only with respect to fishery resource disaster determination requests submitted after December 29, 2022.

(3) Initiation of a fishery resource disaster review**(A) Eligible requesters****(i) In general**

If the Secretary has not independently determined that a fishery resource disaster has occurred, a request for a fishery resource disaster determination may be submitted to the Secretary at any time, but not later than the applicable date determined under clause (ii), by—

- (I) the Governor of an affected State;
- (II) an official resolution of an Indian Tribe; or
- (III) any other comparable elected or politically appointed representative as determined by the Secretary.

(ii) Applicable date

The applicable date under this clause shall be—

- (I) 1 year after the date of the conclusion of the fishing season;
- (II) in the case of a distinct cause that occurs during more than 1 consecutive fishing season, 2 years after the date of the conclusion of the fishing season for which the request for a fishery resource disaster determination is made; or
- (III) in the case of a complete fishery closure, 1 year after the date on which that closure is determined by the Secretary.

(B) Required information

A complete request for a fishery resource disaster determination under subparagraph (A) shall include—

- (i) identification of all presumed affected fish stocks;
- (ii) identification of the fishery as Federal, non-Federal, or both;
- (iii) the geographical boundaries of the fishery, as determined by the eligible requester, including geographic boundaries that are smaller than the area represented by the eligible requester;
- (iv) preliminary information on causes of the fishery resource disaster, if known; and
- (v) information needed to support a finding of a fishery resource disaster, including—

(I) information demonstrating the occurrence of an unexpected large decrease in fish stock biomass or other change that results in significant loss of access to the fishery resource, which could include the loss of fishing vessels and gear, for a substantial period of time;

(II) significant—

(aa) 12-month revenue loss for the affected fishery; or

(bb) negative subsistence impact for the affected fishery, or if a fishery resource disaster has occurred at any time in the previous 5-year period, the most recent 5 years when no fishery resource disaster occurred;

(III) if applicable, information on lost resource tax revenues assessed by local

communities, such as a raw fish tax and local sourcing requirements; and

(IV) if applicable and available, information on affected fishery 12-month revenue loss for charter, headboat, or processors related to the information provided under subclause (I), subject to section 1881a(b) of this title.

(C) Assistance

The Secretary may provide data and analysis assistance to an eligible requester described in paragraph (1), if—

- (i) the assistance is so requested;
- (ii) the Secretary is in possession of the required information described in subparagraph (B); and
- (iii) the data is not available to the requester, in carrying out the complete request under subparagraph (B).

(D) Initiation of review

The Secretary shall have the discretion to initiate a fishery resource disaster review without a request.

(4) Review process

(A) Interim response

Not later than 20 days after receipt of a request under paragraph (3), the Secretary shall provide an interim response to the individual that—

- (i) acknowledges receipt of the request;
- (ii) provides a regional contact within the National Oceanographic and Atmospheric Administration;
- (iii) outlines the process and timeline by which a request shall be considered; and
- (iv) requests additional information concerning the fishery resource disaster, if the original request is considered incomplete.

(B) Evaluation of requests

(i) In general

The Secretary shall complete a review, within the time frame described in clause (ii), using the best scientific information available, in consultation with the affected fishing communities, States, or Indian Tribes, of—

- (I) the information provided by the requester and any additional information relevant to the fishery, which may include—
 - (aa) fishery characteristics;
 - (bb) stock assessments;
 - (cc) the most recent fishery independent surveys and other fishery resource assessments and surveys conducted by Federal, State, or Tribal officials;
 - (dd) estimates of mortality; and
 - (ee) overall effects; and
- (II) the available economic information, which may include an analysis of—
 - (aa) landings data;
 - (bb) revenue;
 - (cc) the number of participants involved;
 - (dd) the number and type of jobs and persons impacted, which may include—

(AA) fishers;

(BB) charter fishing operators;

(CC) subsistence users;

(DD) United States fish processors; and

(EE) an owner of a related fishery infrastructure or business affected by the disaster, such as a marina operator, recreational fishing equipment retailer, or charter, headboat, or tender vessel owner, operator, or crew;

(ee) an impacted Indian Tribe;

(ff) other forms of disaster assistance made available to the fishery, including prior awards of disaster assistance for the same event;

(gg) the length of time the resource, or access to the resource, has been restricted;

(hh) status of recovery from previous fishery resource disasters;

(ii) lost resource tax revenues assessed by local communities, such as a raw fish tax; and

(jj) other appropriate indicators to an affected fishery, as determined by the National Marine Fisheries Service.

(ii) Time frame

The Secretary shall complete the review described in clause (i), if the fishing season, applicable to the fishery—

(I) has concluded or there is no defined fishing season applicable to the fishery, not later than 120 days after the Secretary receives a complete request for a fishery resource disaster determination;

(II) has not concluded, not later than 120 days after the conclusion of the fishing season; or

(III) is expected to be closed for the entire fishing season, not later than 120 days after the Secretary receives a complete request for a fishery resource disaster determination.

(C) Fishery resource disaster determination

The Secretary shall make the determination of a fishery resource disaster based on the criteria for determinations listed in paragraph (5).

(D) Notification

Not later than 14 days after the conclusion of the review under this paragraph, the Secretary shall notify the requester and the Governor of the affected State or Indian Tribe representative of the determination of the Secretary.

(5) Criteria for determinations

(A) In general

The Secretary shall make a determination about whether a fishery resource disaster has occurred, based on the revenue loss thresholds under subparagraph (B), and, if a fishery resource disaster has occurred, whether the fishery resource disaster was due to—

- (i) a natural cause;
- (ii) an anthropogenic cause;
- (iii) a combination of a natural cause and an anthropogenic cause; or

(iv) an undetermined cause.

(B) Revenue loss thresholds

(i) In general

Based on the information provided or analyzed under paragraph (4)(B), the Secretary shall apply the following 12-month revenue loss thresholds in determining whether a fishery resource disaster has occurred:

(I) Losses greater than 80 percent may result in a positive determination that a fishery resource disaster has occurred, based on the information provided or analyzed under paragraph (4)(B).

(II) Losses between 35 percent and 80 percent shall be evaluated to determine whether economic impacts are severe enough to determine that a fishery resource disaster has occurred.

(III) Losses less than 35 percent shall not be eligible for a determination that a fishery resource disaster has occurred.

(ii) Charter fishing

In making a determination of whether a fishery resource disaster has occurred, the Secretary shall consider the economic impacts to the charter fishing industry to ensure financial coverage for charter fishing businesses.

(iii) Negative subsistence impacts

In considering negative subsistence impacts, the Secretary shall evaluate the severity of negative impacts to the fishing community instead of applying the revenue loss thresholds described in clause (i).

(C) Ineligible fisheries

A fishery subject to overfishing in any of the 3 years preceding the date of a determination under this subsection is not eligible for a determination of whether a fishery resource disaster has occurred unless the Secretary determines that overfishing was not a contributing factor to the fishery resource disaster.

(D) Exceptional circumstances

In an exceptional circumstance where substantial economic impacts to the affected fishery and fishing community have been subject to a disaster declaration under another statutory authority, such as in the case of a natural disaster or from the direct consequences of a Federal action taken to prevent, or in response to, a natural disaster for purposes of protecting life and safety, the Secretary may determine a fishery resource disaster has occurred without a request, notwithstanding the requirements under subparagraph (B) and paragraph (3).

(6) Disbursal of appropriated funds

(A) Authorization

The Secretary shall allocate funds available under paragraph (9) for fishery resource disasters.

(B) Allocation of appropriated fishery resource disaster assistance

(i) Notification of funding availability

When there are appropriated funds for 1 or more fishery resource disasters, the Secretary shall notify—

- (I) the public; and
- (II) representatives of affected fishing communities with a positive disaster determination that is unfunded;

of the availability of funds, not more than 14 days after the date of the appropriation or the determination of a fishery resource disaster, whichever occurs later.

(ii) Extension of deadline

The Secretary may extend the deadline under clause (i) by 90 days to evaluate and make determinations on eligible requests.

(C) Considerations

In determining the allocation of appropriations for a fishery resource disaster, the Secretary shall consider commercial, charter, headboat, or seafood processing revenue losses and negative impacts to subsistence or Indian Tribe ceremonial fishing opportunity, for the affected fishery, and may consider the following factors:

- (i) Direct economic impacts.
- (ii) Uninsured losses.
- (iii) Losses of recreational fishing opportunity.
- (iv) Aquaculture operations revenue loss.
- (v) Direct revenue losses to a fishing community.
- (vi) Treaty obligations.
- (vii) Other economic impacts.

(D) Spend plans

(i) In general

To receive an allocation from funds available under paragraph (9), a requester with an affirmative fishery resource disaster determination shall submit a spend plan to the Secretary, not more than 120 days after receiving notification that funds are available, that shall include the following information, if applicable:

(I) Objectives and outcomes, with an emphasis on addressing the factors contributing to the fishery resource disaster and minimizing future uninsured losses, if applicable.

(II) Statement of work.

(III) Budget details.

(ii) Review

(I) In general

The Secretary shall review a spend plan submitted under clause (i) to determine if it is complete and provide notice within 10 days.

(II) Incomplete spend plan

If the Secretary determines that a spend plan submitted under clause (i) is not complete, when providing the notice required by subclause (I), the Secretary shall provide a detailed description of the information that is necessary for the spend plan to be determined complete.

(E) Regional contact

If so requested, the Secretary shall provide a regional contact within the National Oceanic and Atmospheric Administration to facilitate review of spend plans and disbursal of funds.

(F) Disbursal of funds**(i) Availability****(I) Timeline**

Funds shall be made available to grantees not later than 90 days after the date the Secretary receives a complete spend plan.

(II) Review of completed spend plan and apportionment of funds

If so requested, the Director of the Office of Management and Budget may review a completed spend plan concurrently with the Secretary. The Director of the Office of Management and Budget may not delay the timeline described in subclause (I).

(ii) Method

The Secretary may provide an allocation of funds under this subsection in the form of a grant, direct payment, cooperative agreement, loan, or contract.

(iii) Eligible uses**(I) In general**

Funds allocated for fishery resources disasters under this subsection shall restore the fishery affected by such a disaster, prevent a similar disaster in the future, or assist the affected fishing community, and shall prioritize the following uses, which are not in order of priority:

(aa) Habitat conservation and restoration and other activities, including scientific research, that reduce adverse impacts to the fishery or improve understanding of the affected species or its ecosystem.

(bb) The collection of fishery information and other activities that improve management of the affected fishery.

(cc) In a commercial fishery, capacity reduction and other activities that improve management of fishing effort, including funds to offset budgetary costs to refinance a Federal fishing capacity reduction loan or to repay the principal of a Federal fishing capacity reduction loan.

(dd) Developing, repairing, or improving fishery-related public infrastructure.

(ee) Direct assistance to a person, fishing community (including assistance for lost fisheries resource levies), or a business to alleviate economic loss incurred as a direct result of a fishery resource disaster, particularly when affected by a circumstance described in paragraph (5)(D) or by negative impacts to subsistence or Indian Tribe ceremonial fishing opportunity.

(ff) Hatcheries and stock enhancement to help rebuild the affected stock or offset fishing pressure on the affected stock.

(II) Displaced fishery employees

Where appropriate, individuals carrying out the activities described in items (aa) through (dd) of subclause (I) shall be individuals who are, or were, employed in a commercial, charter, or Indian Tribe fishery for which the Secretary has determined that a fishery resource disaster has occurred.

(7) Limitations**(A) Federal share****(i) In general**

Except as provided in clauses (ii) and (iii), the Federal share of the cost of any activity carried out under the authority of this subsection shall not exceed 75 percent of the cost of that activity.

(ii) Waiver

The Secretary may waive the non-Federal share requirements of this subsection, if the Secretary determines that—

(I) no reasonable means are available through which the recipient of the Federal share can meet the non-Federal share requirement; and

(II) the probable benefit of 100 percent Federal financing outweighs the public interest in imposition of the non-Federal share requirement.

(iii) Exception

The Federal share shall be equal to 100 percent in the case of—

(I) direct assistance as described in paragraph (6)(F)(iii)(I)(ee); or

(II) assistance to subsistence or Tribal fisheries.

(B) Limitations on administrative expenses**(i) Federal**

Not more than 3 percent of the funds available under this subsection may be used for administrative expenses by the National Oceanographic and Atmospheric Administration.

(ii) State governments or Indian Tribes

Of the funds remaining after the use described in clause (i), not more than 5 percent may be used by States, Indian Tribes, or interstate marine fisheries commissions for administrative expenses.

(C) Fishing capacity reduction program**(i) In general**

No funds available under this subsection may be used as part of a fishing capacity reduction program in a fishery unless the Secretary determines that adequate conservation and management measures are in place in such fishery.

(ii) Assistance conditions

As a condition of providing assistance under this subsection with respect to a

vessel under a fishing capacity reduction program, the Secretary shall—

(I) prohibit the vessel from being used for fishing in Federal, State, or international waters; and

(II) require that the vessel be—

(aa) scrapped or otherwise disposed of in a manner approved by the Secretary;

(bb) donated to a nonprofit organization and thereafter used only for purposes of research, education, or training; or

(cc) used for another non-fishing purpose provided the Secretary determines that adequate measures are in place to ensure that the vessel cannot reenter any fishery anywhere in the world.

(D) No fishery endorsement

(i) In general

A vessel that is prohibited from fishing under subparagraph (C)(ii)(I) shall not be eligible for a fishery endorsement under section 12113(a) of title 46.

(ii) Noneffective

A fishery endorsement for a vessel described in clause (i) shall not be effective.

(iii) No sale

A vessel described in clause (i) shall not be sold to a foreign owner or reflagged.

(8) Public information on data collection

The Secretary shall make available and update as appropriate, information on data collection and submittal best practices for the information described in paragraph (4)(B).

(9) Authorization of appropriations

There are authorized to be appropriated to carry out this subsection \$377,000,000 for the period of fiscal years 2023 through 2027.

(b) Fishing capacity reduction program

(1) The Secretary, at the request of the appropriate Council for fisheries under the authority of such Council, the Governor of a State for fisheries under State authority, or a majority of permit holders in the fishery, may conduct a voluntary fishing capacity reduction program (referred to in this section as the “program”) in a fishery if the Secretary determines that the program—

(A) is necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the fishery;

(B) is consistent with the Federal or State fishery management plan or program in effect for such fishery, as appropriate, and that the fishery management plan—

(i) will prevent the replacement of fishing capacity removed by the program through a moratorium on new entrants, practicable restrictions on vessel upgrades, and other effort control measures, taking into account the full potential fishing capacity of the fleet; and

(ii) establishes a specified or target total allowable catch or other measures that trig-

ger closure of the fishery or adjustments to reduce catch; and

(C) is cost-effective and, in the instance of a program involving an industry fee system, prospectively capable of repaying any debt obligation incurred under section 53735 of title 46.

(2) The objective of the program shall be to obtain the maximum sustained reduction in fishing capacity at the least cost and in a minimum period of time. To achieve that objective, the Secretary is authorized to pay—

(A) the owner of a fishing vessel, if the permit authorizing the participation of the vessel in the fishery is surrendered for permanent revocation and the vessel owner and permit holder relinquish any claim associated with the vessel or permit that could qualify such owner or holder for any present or future limited access system permit in the fishery for which the program is established or in any other fishery and such vessel is (i) scrapped, or (ii) through the Secretary of the department in which the Coast Guard is operating, subjected to title restrictions (including loss of the vessel’s fisheries endorsement) that permanently prohibit and effectively prevent its use in fishing in federal¹ or state¹ waters, or fishing on the high seas or in the waters of a foreign nation; or

(B) the holder of a permit authorizing participation in the fishery, if such permit is surrendered for permanent revocation, and such holder relinquishes any claim associated with the permit and vessel used to harvest fishery resources under the permit that could qualify such holder for any present or future limited access system permit in the fishery for which the program was established.

(3) Participation in the program shall be voluntary, but the Secretary shall ensure compliance by all who do participate.

(4) The harvester proponents of each program and the Secretary shall consult, as appropriate and practicable, with Councils, Federal agencies, State and regional authorities, affected fishing communities, participants in the fishery, conservation organizations, and other interested parties throughout the development and implementation of any program under this section.

(5) PAYMENT CONDITION.—The Secretary may not make a payment under paragraph (2) with respect to a vessel that will not be scrapped unless the Secretary certifies that the vessel will not be used for fishing in the waters of a foreign nation or fishing on the high seas.

(6) REPORT.—

(A) IN GENERAL.—Subject to the availability of funds, the Secretary shall, within 12 months after January 12, 2007, submit to the Congress a report—

(i) identifying and describing the 20 fisheries in United States waters with the most severe examples of excess harvesting capacity in the fisheries, based on value of each fishery and the amount of excess harvesting capacity as determined by the Secretary;

(ii) recommending measures for reducing such excess harvesting capacity, including

¹ So in original. Probably should be capitalized.

the retirement of any latent fishing permits that could contribute to further excess harvesting capacity in those fisheries; and

(iii) potential sources of funding for such measures.

(B) BASIS FOR RECOMMENDATIONS.—The Secretary shall base the recommendations made with respect to a fishery on—

(i) the most cost effective means of achieving voluntary reduction in capacity for the fishery using the potential for industry financing; and

(ii) including measures to prevent the capacity that is being removed from the fishery from moving to other fisheries in the United States, in the waters of a foreign nation, or on the high seas.

(c) Program funding

(1) The program may be funded by any combination of amounts—

(A) available under clause (iv) of section 713c-3(b)(1)(A) of title 15;

(B) appropriated for the purposes of this section;

(C) provided by an industry fee system established under subsection (d) and in accordance with section 53735 of title 46; or

(D) provided from any State or other public sources or private or non-profit organizations.

(2) All funds for the program, including any fees established under subsection (d), shall be paid into the fishing capacity reduction fund established under section 53735 of title 46.

(d) Industry fee system

(1)(A) If an industry fee system is necessary to fund the program, the Secretary may conduct a referendum on such system. Prior to the referendum, the Secretary shall—

(i) identify, to the extent practicable, and notify all permit or vessel owners who would be affected by the program; and

(ii) make available to such owners information about the industry fee system describing the schedule, procedures, and eligibility requirements for the referendum, the proposed program, and the amount and duration and any other terms and conditions of the proposed fee system.

(B) The industry fee system shall be considered approved if the referendum votes which are cast in favor of the proposed system constitute at least a majority of the permit holders in the fishery, or 50 percent of the permitted allocation of the fishery, who participated in the fishery.

(2) Notwithstanding section 1854(d) of this title and consistent with an approved industry fee system, the Secretary is authorized to establish such a system to fund the program and repay debt obligations incurred pursuant to section 53735 of title 46. The fees for a program established under this section shall—

(A) be determined by the Secretary and adjusted from time to time as the Secretary considers necessary to ensure the availability of sufficient funds to repay such debt obligations;

(B) not exceed 5 percent of the ex-vessel value of all fish harvested from the fishery for which the program is established;

(C) be deducted by the first ex-vessel fish purchaser from the proceeds otherwise payable to the seller and accounted for and forwarded by such fish purchasers to the Secretary in such manner as the Secretary may establish, unless the Secretary determines that such fees should be collected from the seller; and

(D) be in effect only until such time as the debt obligation has been fully paid.

(e) Implementation plan

(1) Framework regulations

The Secretary shall propose and adopt framework regulations applicable to the implementation of all programs under this section.

(2) Program regulations

The Secretary shall implement each program under this section by promulgating regulations that, together with the framework regulations, establish each program and control its implementation.

(3) Harvester proponents' implementation plan

The Secretary may not propose implementation regulations for a program to be paid for by an industry fee system until the harvester proponents of the program provide to the Secretary a proposed implementation plan that, among other matters—

(A) proposes the types and numbers of vessels or permits that are eligible to participate in the program and the manner in which the program shall proceed, taking into account—

(i) the requirements of this section;

(ii) the requirements of the framework regulations;

(iii) the characteristics of the fishery and affected fishing communities;

(iv) the requirements of the applicable fishery management plan and any amendment that such plan may require to support the proposed program;

(v) the general needs and desires of harvesters in the fishery;

(vi) the need to minimize program costs; and

(vii) other matters, including the manner in which such proponents propose to fund the program to ensure its cost effectiveness, as well as any relevant factors demonstrating the potential for, or necessary to obtain, the support and general cooperation of a substantial number of affected harvesters in the fishery (or portion of the fishery) for which the program is intended; and

(B) proposes procedures for program participation (such as submission of owner bids under an auction system or fair market-value assessment), including any terms and conditions for participation, that the harvester proponents deem to be reasonably necessary to meet the program's proposed objectives.

(4) Participation contracts

The Secretary shall contract with each person participating in a program, and each such contract shall, in addition to including such

other matters as the Secretary deems necessary and appropriate to effectively implement each program (including penalties for contract non-performance) be consistent with the framework and implementing regulations and all other applicable law.

(5) Reduction auctions

Each program not involving fair market assessment shall involve a reduction auction that scores the reduction price of each bid offer by the data relevant to each bidder under an appropriate fisheries productivity factor. If the Secretary accepts bids, the Secretary shall accept responsive bids in the rank order of their bid scores, starting with the bid whose reduction price is the lowest percentage of the productivity factor, and successively accepting each additional responsive bid in rank order until either there are no more responsive bids or acceptance of the next bid would cause the total value of bids accepted to exceed the amount of funds available for the program.

(6) Bid invitations

Each program shall proceed by the Secretary issuing invitations to bid setting out the terms and conditions for participation consistent with the framework and implementing regulations. Each bid that the Secretary receives in response to the invitation to bid shall constitute an irrevocable offer from the bidder.

(Pub. L. 94-265, title III, §312, as added Pub. L. 104-297, title I, §116(a), Oct. 11, 1996, 110 Stat. 3600; amended Pub. L. 109-479, title I, §112(a), Jan. 12, 2007, 120 Stat. 3598; Pub. L. 117-328, div. S, title II, §202, Dec. 29, 2022, 136 Stat. 5261; Pub. L. 118-229, §2, Jan. 4, 2025, 138 Stat. 2824.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1)(C)(ii)(II), was in the original “this Act”, meaning Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, 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.

CODIFICATION

In subsecs. (b)(1)(C), (c)(1)(C), (2), and (d)(2), “section 53735 of title 46” substituted for “section 1111 of title XI of the Merchant Marine Act, 1936” on authority of Pub. L. 109-304, §18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted section 53735 of Title 46, Shipping.

PRIOR PROVISIONS

A prior section 312 of Pub. L. 94-265, title III, Apr. 13, 1976, 90 Stat. 359, was set out as an Effective Date note under section 1857 of this title, prior to being amended generally by Pub. L. 104-297.

AMENDMENTS

2025—Subsec. (a)(6)(D). Pub. L. 118-229, §2(1), amended subpar. (D) generally. Prior to amendment, subpar. (D) related to spend plans.

Subsec. (a)(6)(F)(i). Pub. L. 118-229, §2(2), amended cl. (i) generally. Prior to amendment, text read as follows: “Funds shall be made available to grantees not later than 90 days after the date the Secretary receives a complete spend plan.”

2022—Subsec. (a). Pub. L. 117-328 amended subsec. (a) generally. Prior to amendment, subsec. (a) related to fisheries disaster relief.

2007—Subsec. (a)(1)(B). Pub. L. 109-479, §112(a)(1), substituted “measures, including regulatory restrictions (including those imposed as a result of judicial action) imposed to protect human health or the marine environment;” for “measures;”.

Subsec. (a)(4). Pub. L. 109-479, §112(a)(2), substituted “2007 through 2013.” for “1996, 1997, 1998, and 1999.”

Subsec. (b)(1). Pub. L. 109-479, §112(a)(3), in introductory provisions, substituted “the Governor of a State for fisheries under State authority, or a majority of permit holders in the fishery, may conduct a voluntary fishing” for “or the Governor of a State for fisheries under State authority, may conduct a fishing”.

Subsec. (b)(1)(B)(i). Pub. L. 109-479, §112(a)(4), inserted “practicable” after “entrants.”

Subsec. (b)(1)(C). Pub. L. 109-479, §112(a)(5), substituted “cost-effective and, in the instance of a program involving an industry fee system, prospectively” for “cost-effective and”.

Subsec. (b)(2)(A). Pub. L. 109-479, §112(a)(6), added subparagraph (A) and struck out former subparagraph (A) which read as follows: “the owner of a fishing vessel, if such vessel is (i) scrapped, or (ii) through the Secretary of the department in which the Coast Guard is operating, subjected to title restrictions that permanently prohibit and effectively prevent its use in fishing, and if the permit authorizing the participation of the vessel in the fishery is surrendered for permanent revocation and the owner relinquishes any claim associated with the vessel and permit that could qualify such owner for any present or future limited access system permit in the fishery for which the program is established; or”.

Subsec. (b)(4). Pub. L. 109-479, §112(a)(7), substituted “The harvester proponents of each program and the Secretary shall consult, as appropriate and practicable, with Councils.” for “The Secretary shall consult, as appropriate, with Councils.”

Subsec. (b)(5), (6). Pub. L. 109-479, §112(a)(8), added pars. (5) and (6).

Subsec. (d)(1)(A). Pub. L. 109-479, §112(a)(9), (10), in introductory provisions, substituted “Secretary” for “Secretary, at the request of the appropriate Council,” before “may conduct” and “Secretary” for “Secretary, in consultation with the Council,” before “shall—”.

Subsec. (d)(1)(B). Pub. L. 109-479, §112(a)(11), substituted “at least a majority of the permit holders in 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.

Statutory Notes and Related Subsidiaries

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].”

BUDGET REQUEST FOR DEPARTMENT OF COMMERCE

Pub. L. 117-328, div. S, title II, §205(a), Dec. 29, 2022, 136 Stat. 5270, provided that: “In the budget justification materials submitted to Congress in support of the budget of the Department of Commerce for each fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code),

the Secretary of Commerce shall include a separate statement of the amount for each outstanding unfunded fishery resource disasters.”

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.)

Editorial Notes

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.

Statutory Notes and Related Subsidiaries

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, tak-

ing, 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;

(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;

¹ So in original.