

**INTERNATIONAL AND UNITED STATES DOCUMENTS
ON OCEANS LAW AND POLICY**

Edited by John Norton Moore

Compiled by

**The Center for Oceans Law and Policy
University of Virginia School of Law**

for

The Virginia Sea Grant College Program



VOLUME IV

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CENTER FOR OCEANS LAW AND POLICY

University of Virginia School of Law

The Center for Oceans Law and Policy is a non-profit educational, research and archival institute located at the University of Virginia School of Law. Founded in 1976, the Center is supported by the Henry L. and Grace Doherty Charitable Foundation, Inc. In addition to its support of teaching and research at the University, the Center sponsors a series of lectures, forums and conferences to promote the interaction of scholars, policymakers and practitioners in business, science, government, academics and law. In conjunction with its research and publications programs, the Center supports the extensive collections of law materials in the Newlin Collection on Oceans Law and Policy in the Law School Library, as well as an archival collection on the Law of the Sea. In addition, the Center maintains a close relationship with the Marine Affairs Program and the Virginia Sea Grant College Program, both at the University of Virginia.

VIRGINIA SEA GRANT COLLEGE PROGRAM

The Virginia Sea Grant College Program is part of a nationwide network of 30 university-based Sea Grant programs funded through the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. In a partnership between universities, government, and industry, Sea Grant programs work together to address coastal issues through research, education and marine advisory services. The Virginia Sea Grant College Program is administered through the Virginia Graduate Marine Science Consortium with members at the University of Virginia, College of William and Mary, Old Dominion University, and Virginia Polytechnic Institute and State University.



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INTRODUCTION

The history of oceans law and policy, in large measure, may be examined by reviewing the development of associated laws and treaties. As the field has progressed and expanded, it has become increasingly difficult to keep pace with this evolution, even for those familiar with the subject. Anyone approaching the field for the first time faces even greater difficulty comprehending the broad spectrum of interrelated subjects and issues.

This problem has been compounded by the lack of a single consolidated source of relevant materials. Publication of these *International and United States Documents on Oceans Law and Policy* fills this gap by providing a collection of major documents relating to oceans law and policy. Divided into two main sections dealing with international and United States oceans issues, this multi-volume collection offers a systematic presentation of key documents, with each individual subsection organized chronologically to illustrate the development and interrelations of the topic within the broader context of international law. Although many more documents exist, this overview presents—within the constraints of space limitations—those that have enduring value to the field.

Full citations for each document are provided on the title page for that document. Often, two or more citations are provided for ease of reference. Most documents are presented in their entirety. For reasons of space, however, a few have been edited, and those documents are noted on their respective title pages. In these instances, those readers requiring the complete document may refer to the citation.

Representative of the broad range of ocean issues, this publication will serve academia, the oceans community, and policy-makers requiring specific documents for their research. We hope that this collection, because of its breadth, organization and choice of material, will be of lasting value as a reference source.

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and Thomas Jefferson (December, 1793)** concerning
the importance of U.S. navigation

* In an address to Congress, December 8, 1790. J.Sparks ed., XII The Writings of George Washington 14 (Boston, Mass. 1855).

** In the Foreign Commerce Report, December 1793, P.L. Ford ed., VI The Writings of Thomas Jefferson 480, 1892.

It requires also, that we should not overlook the tendency for a war, among the nations most concerned in active commerce with this country, to abridge the means, and thereby at least enhance the price, of transporting its valuable productions to their proper markets. I recommend it to your serious reflection, how far and in what mode it may be expedient to guard against embarrassments from these contingencies, by such encouragements to our own navigation as will render our commerce and agriculture less dependent on foreign bottoms, which may fail us in the very moments most interesting to both of these great objects. Our fisheries, and the transportation of our own produce, offer us abundant means for guarding ourselves against this evil.

George Washington, December 8, 1790

Our navigation ... as a branch of industry ... is valuable Its value, as a branch of industry, is enhanced by the dependence of so many other branches on it. In times of general peace it multiplies competitors for employment in transportation, and so keeps that at its proper level; and in times of war, that is to say, when those nations who may be our principal carriers, shall be at war with each other, if we have not within ourselves the means of transportation, our produce must be exported in belligerent vessels, at the increased expense of war-freight and insurance, and the articles which will not bear that, must perish on our hands.

Thomas Jefferson, December 1793

The Merchant Marine Act of 1936, as Amended*

* Pub. L. 74-835, 49 Stat. 1985; 46 U.S.C. §1101 et seq (1936).

[PUBLIC—No. 835—74TH CONGRESS]

[H. R. 8555]

AN ACT

To further the development and maintenance of an adequate and well-balanced American merchant marine, to promote the commerce of the United States, to aid in the national defense, to repeal certain former legislation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—DECLARATION OF POLICY

SECTION 101. It is necessary for the national defense and development of its foreign and domestic commerce that the United States shall have a merchant marine (a) sufficient to carry its domestic water-borne commerce and a substantial portion of the water-borne export and import foreign commerce of the United States and to provide shipping service on all routes essential for maintaining the flow of such domestic and foreign water-borne commerce at all times, (b) capable of serving as a naval and military auxiliary in time of war or national emergency, (c) owned and operated under the United States flag by citizens of the United States insofar as may be practicable, and (d) composed of the best-equipped, safest, and most suitable types of vessels, constructed in the United States and manned with a trained and efficient citizen personnel. It is hereby declared to be the policy of the United States to foster the development and encourage the maintenance of such a merchant marine.

TITLE II—UNITED STATES MARITIME COMMISSION

SEC. 201. (a) An agency is hereby created, to be known as the United States Maritime Commission (hereinafter referred to as the Commission). The Commission shall be composed of five persons, in this title referred to as members, to be appointed by the President by and with the advice and consent of the Senate. The President shall designate the member to act as chairman of the Commission, and the Commission may elect one of its members as vice chairman. The members of the Commission shall be appointed as soon as practicable after the enactment of this Act and shall continue in office as designated by the President at the time of nomination, for terms of two, three, four, five, and six years, respectively, from the date upon which they qualify and take office; but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he succeeds. The members shall be appointed with due regard to their special fitness for the efficient discharge of the duties imposed upon them by this Act. Not more than three of the members shall be appointed from the same political party. A vacancy in the Commission shall be filled in the same manner as an original

appointment. Any member may be removed by the President for neglect of duty or malfeasance in office. Vacancies in the Commission, so long as there shall be three members in office, shall not impair the power of the Commission to execute its functions, and three of the members in office shall constitute a quorum for the transaction of the business of the Commission. Each member shall receive a salary at the rate of \$12,000 per annum.

(b) No person shall hold office as a member of the Commission who, within three years prior to his appointment, shall have been employed by, or have had any pecuniary interest in, any carrier by water or substantial pecuniary interest in any other person who derives a substantial portion of his revenues from any business associated with ships or shipping. Each member shall devote his full time to the duties of his office. It shall be unlawful for any member, officer, or employee of the Commission to be in the employ of any other person, firm, or corporation, or to have any pecuniary interest in, or hold any official relationship with, any carrier by water, shipbuilder, contractor, or other person, firm, association, or corporation with whom the Commission may have business relations.

(c) The Commission shall, through its secretary, keep a true record of all its meetings and the yea-and-nay votes taken therein, on every action, order, contract, or financial transaction approved or disapproved by the Commission. It shall have an official seal which shall be judicially noticed, and shall adopt rules and regulations in regard to its procedure and the conduct of its business.

(d) The Commission may make such expenditures as are necessary in the performance of its functions from funds made available to it by this Act or hereafter appropriated, which further appropriations are hereby authorized.

(e) Without regard to the civil-service laws or the Classification Act of 1923, as amended, the Commission may appoint and prescribe the duties and fix the salaries of a secretary, a director for each of not to exceed five divisions, a general counsel, a clerk to each member of the Commission, and not more than three assistants, not more than a total of twelve each of naval architects, special experts, attorneys, and examiners and not more than two inspectors at each shipyard at which vessels are being constructed by it or under its supervision. No employee so appointed may receive an annual salary at a rate in excess of that provided under the Classification Act of 1923, as amended. The Commission may, subject to the provisions of the civil-service laws and the Classification Act of 1923, as amended, appoint such other officers, engineers, inspectors, attorneys, examiners, and other employees as are necessary in the execution of its functions: *Provided*, That trained and satisfactory present employees of the United States Shipping Board Bureau or United States Shipping Board Merchant Fleet Corporation shall be eligible for transfer to the Commission, and if after the expiration of a probationary period of six months from the date of employment the Commission shall certify to the United States Civil Service Commission that the services of any employee so transferred are satisfactory, the employee shall thereupon acquire the same status as though certified after examination by the Civil Service Commission.

(f) Each member, any employee of the Commission, and any person detailed to it from any other agency of the Government

shall receive necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, within the limitations prescribed by law, while away from his official station upon official business of the Commission. Expenditures by the Commission shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Commission or a designated employee thereof.

(g) This section shall take effect immediately upon approval of this Act.

SEC. 202. All money, notes, bonds, mortgages, and securities of every kind, contracts and contract rights, lands, vessels, docks, wharves, piers, and property and interests of every kind, owned by the United States, and now controlled by the Department of Commerce as the successor to the powers and functions of the former United States Shipping Board, by virtue of the President's Executive order of June 10, 1933, are hereby transferred to the Commission.

SEC. 203. The United States Shipping Board Merchant Fleet Corporation shall cease to exist and shall stand dissolved. All the records, books, papers, and corporate property of said dissolved corporation shall be taken over by the Commission. All existing contractual obligations of the dissolved corporation shall be assumed by the United States. Any suit against the dissolved corporation pending in any court of the United States shall be defended by the Commission upon behalf of the United States, under the supervision of the Attorney General, and any judgment obtained against the dissolved corporation in any such pending suit shall be reported to Congress in the manner provided in section 226, title 81, United States Code, for reporting judgments against the United States in the Court of Claims.

SEC. 204. (a) All the functions, powers, and duties vested in the former United States Shipping Board by the Shipping Act, 1916, the Merchant Marine Act, 1920, the Merchant Marine Act, 1928, the Intercoastal Shipping Act, 1933, and amendments to those Acts, and now vested in the Department of Commerce pursuant to section 12 of the President's Executive order of June 10, 1933, are hereby transferred to the United States Maritime Commission: *Provided, however,* That after the date of the passage of this Act no further construction loans shall be made under the provisions of section 11 of the Merchant Marine Act, 1920, as amended.

(b) The Commission is hereby authorized to adopt all necessary rules and regulations to carry out the powers, duties, and functions vested in it by this Act. After the expiration of two years from the effective date of this Act, the President is authorized to transfer, by Executive order, to the Interstate Commerce Commission any or all the regulatory powers, regulatory duties, and regulatory functions which, by this title, are vested in the United States Maritime Commission.

(c) The orders issued by the United States Maritime Commission in the exercise of the powers transferred to it by this title shall be enforced in the same manner as heretofore provided by law for enforcement of the orders issued by the former United States Shipping Board, and violation of such orders shall subject the person or corporation guilty of such violation to the same penalties or punishment as heretofore provided for violation of the orders of said Board.

SEC. 205. Without limiting the power and authority otherwise vested in the Commission, it shall be unlawful for any common carrier by water, either directly or indirectly, through the medium of an agreement, conference, association, understanding, or otherwise, to prevent or attempt to prevent any other such carrier from serving any port designed for the accommodation of ocean-going vessels located on any improvement project authorized by the Congress or through it by any other agency of the Federal Government, lying within the continental limits of the United States, at the same rates which it charges at the nearest port already regularly served by it.

SEC. 206. All sums of money now in the construction loan fund created by section 11 of the Merchant Marine Act, 1920, as amended, together with the proceeds of all debts, accounts, choses in action, and the proceeds of all notes, mortgages, and other evidences of indebtedness, hereby transferred to the Commission, and all of the proceeds of sales of ships and surplus property heretofore or hereafter made, including proceeds of notes or other evidences of debt taken therefor and the interest received thereon, shall be deposited in the Treasury of the United States and there maintained as a revolving fund, herein designated as the construction fund, and shall be controlled and employed by the Commission in carrying out the provisions of this Act. All moneys received by the Commission under the provisions of titles IV, V, VI, and VII, of this Act shall be deposited in its construction fund, and all disbursements made by the Commission under authority of said titles shall be paid out of said fund. Further appropriations by Congress to replenish said fund are hereby authorized.

SEC. 207. The Commission may enter into such contracts, upon behalf of the United States, as may, in its discretion, be necessary to carry on the activities authorized by this Act, in the same manner that a private corporation may contract within the scope of the authority conferred by its charter. All the Commission's financial transactions shall be audited in the General Accounting Office according to approved commercial practice as provided in the Act of March 20, 1922 (42 Stat. 444): *Provided*, That it shall be recognized that, because of the business activities authorized by this Act, the accounting officers shall allow credit for all expenditures shown to be necessary because of the nature of such authorized activities, notwithstanding any existing statutory provision to the contrary. The Comptroller General shall report annually or oftener to Congress any departure by the Commission from the provisions of this Act.

SEC. 208. The Commission shall, at the beginning of each regular session, make a report to Congress, which shall include the results of its investigations, a summary of its transactions, its recommendations for legislation, a statement of all receipts under this Act, and the purposes for which all expenditures were made.

SEC. 209. (a) There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

(b) All appropriations and unexpended balances of appropriations available for expenditure by the United States Shipping Board Bureau and United States Shipping Board Merchant Fleet Corporation which would otherwise be applicable to functions transferred to the Commission by this Act, including the fund appropriated

to enable the United States Shipping Board Merchant Fleet Corporation to operate ships or lines of ships which have been or may be taken back from purchasers by reason of competition or other methods employed by foreign shipowners or operators as appropriated by the Independent Offices Act, 1928, approved February 11, 1927 (44 Stat. 1082), and reappropriated by the Department of Commerce Appropriation Acts, shall be available for expenditure by or at the direction of the Commission for any and all objects of expenditure authorized by this Act in the discretion of the Commission, without regard to the requirement of apportionment under the Antideficiency Act of February 27, 1906 (U. S. C., title 31, sec. 665).

(c) After the transfer, under section 404 of this Act, to the Commission of the powers and duties of the Postmaster General with respect to existing ocean-mail contracts entered into pursuant to title IV, Merchant Marine Act, 1928 (U. S. C., Supp. VII, title 46, secs. 891e to 891r, inclusive), all appropriations and unexpended balances of appropriations available for expenditure by the Post Office Department for the transportation of foreign mails under contracts authorized by the Merchant Marine Act, 1928, less any amount necessary to be paid out by the Post Office Department, shall be available for any and all objects of expenditure authorized by this Act, by or at the direction of the Commission, without regard to the requirement of apportionment under the Antideficiency Act of February 27, 1906.

(d) Funds made available under the provisions of subsection (b) of this section shall be available for expenditures authorized by the Commission under the provisions of section 201 of this Act as soon as a majority of the members of the Commission shall have taken the oath of office, notwithstanding the provisions of section 907 of this Act.

Sec. 210. It shall be the duty of the Commission to make a survey of the American merchant marine, as it now exists, to determine what additions and replacements are required to carry forward the national policy declared in section 101 of this Act, and the Commission is directed to study, perfect, and adopt a long-range program for replacements and additions to the American merchant marine so that as soon as practicable the following objectives may be accomplished:

First, the creation of an adequate and well-balanced merchant fleet, including vessels of all types, to provide shipping service on all routes essential for maintaining the flow of the foreign commerce of the United States, the vessels in such fleet to be so designed as to be readily and quickly convertible into transport and supply vessels in a time of national emergency. In planning the development of such a fleet the Commission is directed to cooperate closely with the Navy Department as to national-defense needs and the possible speedy adaptation of the merchant fleet to national-defense requirements.

Second, the ownership and the operation of such a merchant fleet by citizens of the United States insofar as may be practicable.

Third, the planning of vessels designed to afford the best and most complete protection for passengers and crew against fire and all marine perils.

SEC. 211. The Commission is authorized and directed to investigate, determine, and keep current records of—

(a) The ocean services, routes, and lines from ports in the United States, or in a Territory, district, or possession thereof, to foreign markets, which are, or may be, determined by the Commission to be essential for the promotion, development, expansion, and maintenance of the foreign commerce of the United States, and in reaching its determination the Commission shall consider and give due weight to the cost of maintaining each of such steamship lines, the probability that any such line cannot be maintained except at a heavy loss disproportionate to the benefit accruing to foreign trade, the number of sailings and types of vessels that should be employed in such lines, and any other facts and conditions that a prudent business man would consider when dealing with his own business, with the added consideration, however, of the intangible benefit the maintenance of any such line may afford to the foreign commerce of the United States and to the national defense;

(b) The type, size, speed, and other requirements of the vessels, including express-liner or super-liner vessels, which should be employed in such services or on such routes or lines, and the frequency and regularity of the sailings of such vessels, with a view to furnishing adequate, regular, certain, and permanent service;

(c) The relative cost of construction of comparable vessels in the United States and in foreign countries;

(d) The relative cost of marine insurance, maintenance, repairs, wages and subsistence of officers and crews, and all other items of expense, in the operation of comparable vessels in particular services, routes, and lines under the laws, rules, and regulations of the United States and under those of the foreign countries whose vessels are substantial competitors of any such American service, route, or line;

(e) The extent and character of the governmental aid and subsidies granted by foreign governments to their merchant marine;

(f) The number, location, and efficiency of the shipyards existing on the date of the enactment of this Act or thereafter built in the United States;

(g) To investigate and determine what provisions of this Act and other Acts relating to shipping should be made applicable to aircraft engaged in foreign commerce in order to further the policy expressed in this Act, and to recommend appropriate legislation to this end;

(h) The advisability of enactment of suitable legislation authorizing the Commission, in an economic or commercial emergency, to aid the farmers and cotton, coal, lumber, and cement producers in any section of the United States in the transportation and landing of their products in any foreign port, which products can be carried in dry-cargo vessels by reducing rates, by supplying additional tonnage to any American operator, or by operation of vessels directly by the Commission, until such time as the Commission shall deem such special rate reduction and operation unnecessary for the benefit of the American farmers and such producers; and

(i) New designs, new methods of construction, and new types of equipment for vessels; the possibilities of promoting the carrying of American foreign trade in American vessels; and intercoastal and inland water transportation, including their relation to transportation by land and air.

SEC. 212. The Commission is authorized and directed—

(a) To study all maritime problems arising in the carrying out of the policy set forth in title I of this Act;

(b) To study, and to cooperate with vessel owners in devising means by which—

(1) the importers and exporters of the United States can be induced to give preference to vessels under United States registry; and

(2) there may be constructed by or with the aid of the United States express-liner or super-liner vessels comparable with those of other nations, especially with a view to their use in national emergency, and the use in connection with or in lieu of such vessels of transoceanic aircraft service;

(c) To collaborate with vessel owners and shipbuilders in developing plans for the economical construction of vessels and their propelling machinery, of most modern economical types, giving thorough consideration to all well-recognized means of propulsion and taking into account the benefits accruing from standardized production where practicable and desirable;

(d) To establish and maintain liaison with such other boards, commissions, independent establishments, and departments of the United States Government, and with such representative trade organizations throughout the United States as may be concerned, directly or indirectly, with any movement of commodities in the water-borne export and import foreign commerce of the United States, for the purpose of securing preference to vessels of United States registry in the shipment of such commodities; and

(e) To investigate, under the regulatory powers transferred to it by this Act, any and all discriminatory rates, charges, classifications, and practices whereby exporters and shippers of cargo originating in the United States are required by any common carrier by water in the foreign trade of the United States to pay a higher rate from any United States port to a foreign port than the rate charged by such carrier on similar cargo from such foreign port to such United States port, and recommend to Congress measures by which such discrimination may be corrected.

(f) To make recommendations to Congress, from time to time, for such further legislation as it deems necessary better to effectuate the purpose and policy of this Act.

SEC. 213. The Commission shall make studies of and make a report to Congress as soon as practicable on—

(a) The scrapping or removal from service of old or obsolete merchant tonnage owned by the United States or in use in the merchant marine;

(b) Tramp shipping service and the advisability of citizens of the United States participating in such service with vessels under United States registry.

(c) The relative cost of construction or reconditioning of comparable ocean vessels in shipyards in the various coastal districts of the United States, together with recommendations as to how such shipyards may compete for work on an equalized basis.

SEC. 214. (a) For the purpose of any investigation which, in the opinion of the Commission, is necessary and proper in carrying out

the provisions of this Act, any member of the Commission, or any officer or employee thereof designated by it, is empowered to subpoena witnesses, administer oaths and affirmations, take evidence, and require the production of any books, papers, or other documents which are relevant or material to the matter under investigation. Such attendance of witnesses and the production of such books, papers, or other documents may be required from any place in the United States or any Territory, district, or possession thereof at any designated place of hearing within the Federal judicial district in which the witness resides. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(b) Upon failure of any person to obey a subpoena issued by the Commission, it may invoke the aid of any District Court of the United States within the jurisdiction in which such person resides or carries on business in requiring the attendance and testimony of witnesses and the production of books, papers, or other documents. Any such court may issue an order requiring such person to appear before the Commission, or member, officer, or employee designated by the Commission, there to produce books, papers, or any other documents, if so ordered, or to give testimony touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof. Any process in any such case may be served in the judicial district wherein such person resides or wherever he may be found.

(c) No person shall be excused from attending and testifying or from producing books, papers, or other documents before the Commission, or any member or officer or employee thereof, in any investigation instituted by the Commission under this Act, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no person shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

TITLE III—AMERICAN SEAMEN

SEC. 301. (a). The Commission is authorized and directed to investigate the employment and wage conditions in ocean-going shipping and, after making such investigation and after appropriate hearings, to incorporate in the contracts authorized under titles VI and VII of this Act minimum-manning scales and minimum-wage scales and reasonable working conditions for all officers and crews employed on all types of vessels receiving an operating-differential subsidy. After such minimum manning and wage scales and working conditions shall have been adopted by the Commission, no change shall be made therein by the Commission except upon formal complaint, public notice of the hearing to be had on such complaint,

and a hearing by the Commission of all interested parties, under such rules as the Commission shall prescribe. Every contractor receiving an operating-differential subsidy shall post and keep posted in a conspicuous place on each such vessel operated by such contractor a printed copy of the minimum manning and wage scales and working conditions prescribed by his contract and applicable to such vessel: *Provided, however,* That any increase in the operating expenses of the subsidized vessel occasioned by any change in the wage, manning scales, and working conditions as provided in this section shall be added to the operating-differential subsidy previously authorized for the vessel.

(b) Every contract executed under authority of titles VI and VII of this Act shall require—

(1) Insofar as is practicable, officers' living quarters shall be kept separate and apart from those furnished for members of the crew;

(2) Licensed officers and unlicensed members of the crew shall be entitled to make complaints or recommendations to the Commission, Coast Guard, or Department of Labor, providing they file such complaint or recommendation with their immediate superior, who shall be required to forward such complaint or recommendation with his remarks to the Commission, Coast Guard, or Department of Labor;

(3) Licensed officers who are members of the Naval Reserve Corps shall wear on their uniforms such special distinguishing insignia as may be approved by the Secretary of the Navy; officers being those men serving under licenses issued by the Bureau of Navigation and Steamboat Inspection;

(4) The uniform stripes, decoration, or other insignia shall be of gold braid or woven gold or silver material, to be worn by officers, and no member of the ship's crew other than licensed officers shall be allowed to wear any uniform with such officer's identifying insignia;

(5) No discrimination shall be practiced against licensed officers, who are otherwise qualified, because of their failure to qualify as members of the Naval Reserve Corps; and

(6) Licensed officers shall take their meals in the main dining salon of the vessel and no other place during regular meal hours, except in cases of emergency.

Sec. 302. (a) All licensed officers of vessels documented under the laws of the United States, as now required by law, shall be citizens of the United States, native-born or completely naturalized; and upon each departure from the United States of a cargo vessel in respect of which a construction or operating subsidy has been granted all of the crew (crew including all employees of the ship) shall be citizens of the United States, native-born or completely naturalized.

(b) For a period of one year after the effective date of this Act, upon each departure from the United States of a passenger vessel in respect of which a construction or operation subsidy has been granted, all licensed officers shall be citizens of the United States as defined above, and no less than 80 per centum of the crew (crew

including all employees of the ship other than officers) shall be citizens of the United States, native-born or completely naturalized, and thereafter the percentage of citizens, as above defined, shall be increased 5 per centum per annum until 90 per centum of the entire crew, including all licensed officers of any such vessel, shall be citizens of the United States, native-born or completely naturalized.

(c) Any member of the crew, not required by this section to be a citizen of the United States, may be an alien only if he is in possession of a valid declaration of intention to become a citizen of the United States, or other evidence of legal admission to the United States for permanent residence. Such alien, as above defined, may be employed only in the steward's department on passenger vessels.

(d) If any such vessel (as above defined) while on a foreign voyage is for any reason deprived of the services of any employee below the grade of master, his place or a vacancy caused by the promotion of another to his place may be supplied by a person other than defined in paragraphs (a) and (b), until the first return of such vessel to a port in the United States.

(e) The owner, agent, or officer of any such vessel who knowingly employs any person in violation of the provisions of this Act shall, upon conviction thereof, be fined \$50 for each person so employed.

(f) This section shall be enforced by the Secretary of Commerce, for the purpose of carrying out the provisions of this section, and shall take effect ninety days after its enactment, and will then repeal paragraph (c), section 405, Merchant Marine Act, 1928.

(g) All of the deck and engineer officers employed on vessels on which an operating-differential subsidy is paid under authority of title VI, or employed on the Commission's vessels, after one year after the passage of this Act, shall, if eligible, be members of the United States Naval Reserve.

(h) During a national emergency as proclaimed by the President he may, in his discretion, suspend any or all of the provisions of this section.

TITLE IV--OCEAN-MAIL CONTRACTS

Sec. 401. No contract heretofore made by the Postmaster General, pursuant to the provisions of the Merchant Marine Act of 1928, for the carriage of mail, shall be continued in effect after June 30, 1937, and after that date it shall be unlawful for any officer of the United States to pay from any public funds any compensation to the holder of such contract for services thereunder, except for such voyages as were completed prior to the expiration date herein fixed and for voyages commenced prior to said expiration date and which shall not have been completed prior to said expiration date.

Sec. 402. (a) The holder of any mail contract that is to be terminated as provided in section 401 of this title may, within ninety days after the passage of this Act, file an application with the Commission to adjust and settle all the rights of the parties under such contract and to substitute in whole or in part therefor a contract or contracts authorized in titles V and VI of this Act in accordance with the conditions hereinafter prescribed. Such application shall be in such form and filed under such regulations as the Commission may prescribe.

"(b) As soon as practicable after the filing of any such application, the Commission shall proceed to attempt to adjust all differences with such contractor, including any claims of the contractor against the United States and any claims of the United States against such contractor, arising out of its foreign ocean mail contract. In adjusting such differences and claims, the Commission shall not take into consideration any prospective or speculative future profits, but shall consider any and all payments theretofore made by the United States pursuant to such mail contract, and the profits realized as a result thereof, and the interest paid and the interest due according to law on construction loans, and all other facts deemed pertinent. If the contractor shall be willing to accept such determination and receive payment for the amount determined by the Commission to be a fair adjustment of such differences the Commission is authorized and directed to enter into and execute a settlement agreement with such contractor, wherein such contractor shall release the United States from any and all further claims arising from such contractor's mail contract: *Provided*, That the Attorney General of the United States may, if he is dissatisfied with such finding, appeal the same to the Court of Claims within a period of sixty days from the date such settlement is agreed upon, of record, by the Commission and the contractor. If such appeal is not taken for the United States by the Attorney General within sixty days from the record agreement between the Commission and the contractor, the contractor shall be paid any sum of money due him under such settlement agreement from any funds controlled by the Commission or hereafter appropriated for that purpose; or if such appeal is taken by the Attorney General, then, within sixty days from the rendition of the final judgment by the courts, the contractor shall be paid any sum of money due him under such judgment, from any funds controlled by the Commission or hereafter appropriated for that purpose.

"(c) If the holder of any ocean mail contract terminated by the provisions of section 401 of this title does not enter into and execute a settlement agreement as provided in subsection (b) hereof, such holder may sue the United States in the United States Court of Claims, but such suit shall not be maintained unless brought before January 1, 1938. If suit is filed in the Court of Claims the claimant and the United States shall have the right in such court to set up and have determined and adjusted by the court all legal and equitable claims, differences, offsets, credits, and recoupments to which either may be entitled, to the end that all conflicting claims, assertions, and rights may be fully, fairly, and completely settled and adjudged by the court, including any question as to the legality of the contract as originally made or as modified, altered, or amended. The jurisdiction of said court to award any damages or payments to the ocean mail contractor is hereby expressly limited to an award of just compensation under the provisions heretofore set forth and such just compensation shall not include any allowances for prospective profits or for speculative future profits that might have been realized by the claimant if permitted further to carry out the contract. The remedy herein provided shall be exclusive and no other suit shall be maintained by the applicant or by any other person in any court of the

United States arising out of any claims under or connected with said contract.”

SEC. 403. (a) If any sum of money is payable to the contractor under the terms of any settlement agreement made pursuant to section 402 (b) of this title, such sum shall be applied as a credit upon any amount owing by the contractor to the United States on any loan agreement entered into under section 11 of the Merchant Marine Act, 1920, as amended, or upon unpaid ship-sales mortgage notes.

SEC. 404. All the powers and duties now vested by law in the Postmaster General, with respect to existing ocean-mail contracts, executed pursuant to title IV of the Merchant Marine Act, 1928, are hereby transferred to and vested in the Commission.

SEC. 405. (a) All mails of the United States carried on vessels between ports between which it is lawful under the navigation laws for a vessel not documented under the laws of the United States to carry merchandise shall, insofar as practicable, be carried on vessels of United States registry.

(b) Every steamship company carrying the mails shall carry on any ship it operates and without extra charge therefor the persons in charge of the mails and when on duty and traveling to and from duty, and all duly accredited agents and officers of the Post Office Department and post-office inspectors while traveling on official business, upon the exhibition of their credentials.

TITLE V—CONSTRUCTION-DIFFERENTIAL SUBSIDY

SEC. 501. (a) Any citizen of the United States may make application to the Commission for a construction-differential subsidy to aid in the construction of a new vessel, to be used on a service, route, or line in the foreign commerce of the United States, determined to be essential under section 211 of this Act. No such application shall be approved by the Commission unless it determines that (1) the service, route, or line requires a new vessel of modern and economical design to meet foreign-flag competition and to promote the foreign commerce of the United States; (2) the plans and specifications call for a new vessel which will meet the needs of the service, route, or line, and the requirements of commerce; (3) the applicant possesses the ability, experience, financial resources, and other qualifications necessary to enable it to operate and maintain the proposed new vessel in such service, or on such route or line, and to maintain and continue adequate service on said route or line, including replacement of worn-out or obsolete tonnage with new and modern ships; and (4) the granting of the aid applied for is reasonably calculated to carry out effectively the purposes and policy of this Act.

(b) The Commission shall submit the plans and specifications for the proposed vessel to the Navy Department for examination thereof and suggestions for such changes therein as may be deemed necessary or proper in order that such vessel shall be suitable for economical and speedy conversion into a naval or military auxiliary, or otherwise suitable for the use of the United States Government in time of war or national emergency. If the Secretary of the Navy approves such plans and specifications as submitted, or as modified, in accordance with the provisions of this subsection, he shall certify such approval to the Commission.

(c) Any citizen of the United States may make application to the Commission for a construction-differential subsidy to aid in reconstructing or reconditioning any vessel that is to be exclusively used on a service, route, or line in the foreign commerce of the United States, determined to be essential under section 211 of this Act. If the Commission, in the exercise of its discretion, shall determine that the granting of the financial aid applied for is reasonably calculated to carry out effectively the purposes and policy of this Act, the Commission may approve such application and enter into a contract or contracts with the applicant therefor providing for the payment by the United States of a construction-differential subsidy that is to be ascertained, determined, controlled, granted, and paid, subject to all the applicable conditions and limitations of this title and under such further conditions and limitations as may be prescribed in the rules and regulations the Commission has adopted as provided in section 201 (c) of this Act; but the financial aid authorized by this subsection shall be extended to reconstruction or reconditioning only in exceptional cases and after a thorough study and a formal determination by the commission that the proposed reconstruction or reconditioning is consistent with the purposes and policy of this Act.

Sec. 502. (a) If the Secretary of the Navy certifies his approval under section 501 (b) of this Act, and the Commission approves the application, it may secure, on behalf of the applicant, bids for the construction of the proposed vessel according to the approved plans and specifications. If the bid of the shipbuilder who is the lowest responsible bidder is determined by the Commission to be fair and reasonable, the Commission may approve such bid, and if such approved bid is accepted by the applicant, the Commission is authorized to enter into a contract with the successful bidder for the construction, outfitting, and equipment of the proposed vessel, and for the payment by the Commission to the shipbuilder, on terms to be agreed upon in the contract, the cost of the vessel, out of the construction fund hereinbefore referred to, or out of other available funds. Concurrently with entering into such contract with the shipbuilder, the Commission is authorized to enter into a contract with the applicant for the purchase by him of such vessel upon its completion, at a price corresponding to the estimated cost, as determined by the Commission pursuant to the provisions of this Act, of building such vessel in a foreign shipyard.

(b) The amount of the reduction in selling price which is herein termed the "construction-differential subsidy" may equal, but not exceed, the excess of the bid of the shipbuilder constructing the proposed vessel (excluding the cost of any features incorporated in the vessel for national-defense uses, which shall be paid by the Commission in addition to the subsidy), over the fair and reasonable estimate of cost, as determined by the Commission, of the construction of the proposed vessel if it were constructed under like plans and specifications (excluding national-defense features as above provided) in a principal foreign shipbuilding center which is availed of by the principal foreign competitors in the service in which the vessel is to be operated, and which is deemed by the Commission to furnish a fair and representative example for the determination of the estimated cost of construction in foreign countries of vessels of the type

proposed to be constructed: *Provided*, That the construction differential approved by the Commission shall not exceed 83½ per centum of the construction cost of the vessel paid by the Commission (excluding the cost of national-defense features as above provided), except in cases where the Commission possesses conclusive evidence that the actual differential is greater than that percentage, in which cases the Commission may approve an allowance not to exceed 50 per centum of such cost, upon the affirmative vote of four members, except as otherwise provided in subsection 201 (a).

(c) In such contract between the applicant and the Commission, the applicant shall be required to pay the Commission a sum equal to 25 per centum of the construction cost of the vessel paid by the Commission (excluding cost of national-defense features as above provided) such cash payment to be made at the time and in the same proportion as provided for the payment of the construction cost in the contract between the shipbuilder and the Commission; and the balance of such purchase price shall be paid by the applicant, within twenty years after delivery of the vessel and in not to exceed twenty equal annual installments, the first of which shall be payable one year after the delivery of the vessel by the Commission to the applicant. Interest at the rate of 3½ per centum per annum shall be paid on all installments of purchase price remaining unpaid.

(d) In case a construction subsidy is applied for under this title by an applicant who has as his principal place of business a place on the Pacific coast of the United States (but not including one who, having been in business on or before August 1, 1935, has changed his principal place of business to a place on the Pacific coast of the United States after such date) to aid in the construction or reconditioning of a vessel to be operated in foreign trade in a service, route, or line from ports on the Pacific coast of the United States, and the amount of the bid of the shipbuilder on the Pacific coast who is the lowest responsible bidder on such coast for such construction or reconditioning does not exceed the amount of the bid of the shipbuilder on the Atlantic coast of the United States who is the lowest responsible bidder therefor by more than 6 per centum of the amount of the bid of such Atlantic coast shipbuilder, the Commission shall, except as provided in subsection (e), approve such Pacific coast bid, and in such case no payment shall be made to aid in such construction or reconditioning unless the applicant accepts the bid of such Pacific coast shipbuilder and agrees to designate and continue as the home port of the vessel to be constructed or reconditioned a port on the Pacific coast.

(e) If no bids are received for the construction, outfitting, or equipping of such vessel, or if it appears to the Commission that the bids received from privately owned shipyards of the United States are collusive, excessive, or unreasonable, and if the applicant agrees to purchase said vessel as provided in this section, then, to provide employment for citizens of the United States, the Commission may have such vessel constructed, outfitted, or equipped at not in excess of the actual cost thereof in a navy yard of the United States under such regulations as may be promulgated by the Secretary of the Navy and the Commission. In such event the Commission is authorized to pay for any such vessel so constructed from

its construction fund. The Commission is authorized to sell any vessel so constructed, outfitted, or equipped in a navy yard to an applicant for the fair and reasonable value thereof, but at not less than the cost thereof less the equivalent to the construction differential subsidy determined as provided by subsection (b), such sale to be in accordance with all the provisions of this title.

Sec. 503. Upon completion of the construction of any vessel in respect to which a construction subsidy is to be allowed under this title and its delivery by the shipbuilder to the Commission, the vessel shall be documented under the laws of the United States, and concurrently therewith, or as soon thereafter as practicable, the vessel shall be delivered with a bill of sale to the applicant with warranty against liens, pursuant to the contract of purchase between the applicant and the Commission hereinbefore provided for. The vessel shall remain documented under the laws of the United States for not less than twenty years, and so long as there remains due the United States any principal or interest on account of the purchase price, whichever shall be the longer period. At the time of delivery of the vessel the applicant shall execute and deliver a first preferred mortgage to the United States to secure payment of any sums due from the applicant in respect to said vessel. The purchaser shall also comply with all the provisions of section 9 of the Merchant Marine Act, 1920.

Sec. 504. Where an eligible applicant under the terms of this title desires to finance the construction of a proposed vessel according to approved plans and specifications rather than purchase the same vessel from the Commission as hereinabove authorized, the Commission may permit the applicant to obtain and submit to it competitive bids from American shipyards for such work. If the Commission considers the bid of the shipyard in which the applicant desires to have the vessel built fair and reasonable and if it is the lowest bid, it may approve such bid and become a party to the contract or contracts or other arrangements for the construction of such proposed vessel and may agree to pay to the shipbuilder a construction subsidy in an amount determined by the Commission in accordance with section 502 of this title: *Provided, however,* That no subsidy as provided in this section shall be paid unless the said contract or contracts or other arrangements contain such provisions as are provided in this title to protect the interests of the United States as the Commission deems necessary. Such vessel shall be documented under the laws of the United States as provided in section 503 of this title and operated as approved by the Commission under the requirements applicable to vessels constructed under this Act.

Sec. 505 (a) All construction in respect of which a subsidy is allowed under this title shall be performed in a shipyard within the continental limits of the United States as the result of competitive bidding, after due advertisement, with the right reserved in the applicant to reject, and in the Commission to disapprove, any or all bids. In all such construction the shipbuilder, subcontractors, materialmen, or suppliers shall use, so far as practicable, only articles, materials, and supplies of the growth, production, or manufacture of the United States as defined in paragraph K of section 401 of the Tariff Act of 1930. No shipbuilder shall be deemed a

responsible bidder unless he possesses the ability, experience, financial resources, equipment, and other qualifications necessary properly to perform the proposed contract. Each bid submitted to the Commission shall be accompanied by all detailed estimates upon which it is based. The Commission may require that the bids of any subcontractors, or other pertinent data, accompany such bid. All such bids and data relating thereto shall be kept permanently on file.

(b) No contract shall be made for the construction of any vessel under this Act unless the shipbuilder shall agree: (1) to make a report under oath to the Commission upon completion of the contract, setting forth in the form prescribed by the Commission the total contract price, the total cost of performing the contract, the amount of the shipbuilder's overhead charged to such cost, the net profits and the percentage such net profit bears to the contract price, and such other information as the Commission shall prescribe; (2) to pay to the Commission profit, as hereinafter provided shall be determined by the Commission, in excess of 10 per centum of the total contract prices of such contracts within the scope of this section as are completed by the particular contracting party within the income taxable year, such amount to become the property of the United States, but the surety under such contracts shall not be liable for the payment of such excess profit: *Provided*, That if there is a net loss on all such contracts or subcontracts completed by the particular contractor or subcontractor within any income taxable year, such net loss shall be allowed as a credit in determining the excess profit, if any, for the next succeeding income taxable year: *Provided*, That, if such amount is not voluntarily paid, the Commission shall determine the amount of such excess profit and collect it in the same manner that other debts due the United States may be collected; (3) to make no subdivisions of any contract or subcontract for the same article or articles for the purpose of evading the provisions of this Act, and any subdivision of any contract or subcontract involving an amount in excess of \$10,000 shall be subject to the conditions herein prescribed; (4) that the books, files, and all other records of the shipbuilder, or any holding, subsidiary, affiliated, or associated company, shall at all times be subject to inspection and audit by any person designated by the Commission, and the premises, including ships under construction, of the shipbuilder, shall at all reasonable times be subject to inspection by the agents of the Commission; and (5) to make no subcontract unless the subcontractor agrees to the foregoing conditions: *Provided*, That this section shall not apply to contracts or subcontracts for scientific equipment used for communication and navigation as may be so designated by the Commission, and the Commission shall report annually to the Congress the names of such contractors and subcontractors affected by this provision, together with the applicable contracts and the amounts thereof.

(c) The method of determining the shipbuilder's profit shall be prescribed by the Commission: *Provided*, That in computing such profits no salary of more than \$25,000 per year to any individual shall be considered as a part of the cost of building such ship, and the Commission shall scrutinize construction costs and overhead expenses to determine that they are fair, just, and not in excess of a

reasonable market price for commodities or goods or services purchased or charged.

(d) The Commission may, with the consent of the Secretary of the Treasury, utilize the services of Treasury Department employees engaged in similar functions in the determination or collection of shipbuilder profits in naval construction.

(e) If the shipbuilder whose bid has been approved by the Commission and accepted by the applicant, as provided in section 502 of this title, shall refuse to agree to any of the requirements of this section, the Commission is authorized to rescind its approval of such bid and to advertise for new bids, or, in its discretion, the Commission may have the vessel or vessels in question constructed in a United States navy yard.

SEC. 506. It shall be unlawful to operate any vessel, for the construction of which any subsidy has been paid pursuant to this title, other than exclusively in foreign trade, or on a round-the-world voyage or a round voyage from the west coast of the United States to a European port or ports or a round voyage from the Atlantic coast to the Orient which includes intercoastal ports of the United States, or on a voyage in foreign trade on which the vessel may stop at an island possession or island territory of the United States, unless the owner of such vessel shall receive the written consent of the Commission so to operate and prior to such operation shall agree to pay to the Commission, upon such terms and conditions as the Commission may prescribe, an amount which bears the same proportion to the construction subsidy theretofore paid or agreed to be paid (excluding cost of national-defense features as hereinbefore provided), as the remaining economic life of the vessel bears to its entire economic life. If an emergency arises which, in the opinion of the Commission, warrants the temporary transfer of a vessel, for the construction of which any subsidy has been paid pursuant to this title, to service other than exclusive operation in foreign trade, the Commission may permit such transfer: *Provided*, That no operating differential subsidy shall be paid during the duration of such temporary or emergency period, and such period shall not exceed three months. Every contractor receiving a contract for a construction-differential subsidy under the provisions of this title shall agree that if the subsidized vessel engages in domestic trade on a round-the-world voyage or a round voyage from the west coast of the United States to a European port or ports or loads or discharges cargo or passengers at an island possession or island territory as permitted by this section, that the contractor will repay annually to the Commission that proportion of one-twentieth of such construction subsidy as the gross revenue of such protected trade bears to the gross revenue derived from the entire voyages completed during the preceding year.

SEC. 507. If a contract is made by the Commission under authority of this title for the construction and sale of a new vessel to replace a vessel exclusively operated in foreign trade, which in the judgment of the Commission should be replaced because it is obsolete or inadequate for successful operation in such trade, the Commission is authorized, in its discretion, to buy such replaced vessel from the owner at a fair and reasonable valuation, which valuation shall not

exceed the cost to the owner or any former owner plus the actual cost previously expended thereon for reconditioning, and less a reasonable and proper depreciation, based upon not more than a twenty-year life of the vessel and less a proper deduction for obsolescence, and apply the purchase price agreed upon to that portion of the construction cost of such new vessel which is to be borne by the purchaser thereof: *Provided*, That the owner of such replaced vessel shall execute a bond, with one or more approved sureties, conditioned upon indemnifying the United States from all loss resulting from any existing lien against such vessel: *And provided further*, That such vessel has been documented under the laws of the United States for a period of at least ten years prior to the date of its purchase by the United States.

SEC. 508. If the Commission shall determine that any vessel transferred to it by section 202 of this Act, or hereafter acquired, is of insufficient value for commercial or military operation to warrant its further preservation, the Commission is authorized (1) to scrap said vessel, or (2) to sell such vessel for cash, after appraisal and due advertisement, and upon competitive sealed bids, either to citizens of the United States or to aliens: *Provided*, That the purchaser thereof shall enter into an undertaking with sureties approved by the Commission that such vessel shall not be operated in the foreign commerce of the United States at any time within the period of ten years after the date of the sale, in competition with any other vessel owned by a citizen or citizens of the United States and registered under the laws thereof.

SEC. 509. Any citizen of the United States may make application to the Commission for aid in the construction of a new vessel to be operated in the domestic trade (excepting vessels engaged solely in the transportation of property on inland rivers and canals exclusively). If such application is approved by the Commission, the vessel may be constructed and sold to such applicant under the same terms and conditions as are provided in this Act for the construction and sale of vessels to be operated in foreign trade, but no construction subsidy shall be allowed (except for the cost of national-defense features which shall be paid by the Commission), and the applicant shall be required to pay the Commission not less than 25 per centum of the cost of such vessel (excluding cost of national-defense features); and the balance of such purchase price shall be paid by the applicant within twenty years in not to exceed twenty equal annual installments, with interest at $3\frac{1}{2}$ per centum per annum, secured by a preferred mortgage on the vessel sold and otherwise secured as the Commission may determine: *Provided*, That in case a vessel is to be constructed under this section for an applicant who has as his principal place of business a place on the Pacific coast of the United States (but not including one who having been in business on or before August 1, 1935, has changed his principal place of business to a place on the Pacific coast of the United States after such date), to be operated in a coastwise, intercoastal, or other domestic service, route, or line from or on the Pacific coast of the United States, and the amount of the lowest responsible bid of shipyards on such coast for the construction of such vessel does not exceed the amount of the lowest responsible bid therefor of shipyards on the Atlantic coast of

the United States by more than 6 per centum of the amount of the bid of such Atlantic coast shipyard, such vessel shall be constructed for the applicant by the Commission only if the applicant accepts such lowest responsible bid of the Pacific coast shipyard, and agrees to designate and continue as the home port of the vessel to be constructed a port on the Pacific coast of the United States. The minimum rate of interest on deferred payments shall be three-fourths of 1 per centum lower than the minimum rate which would otherwise be applicable, with respect to the periods of construction of such vessel and its operation exclusively in coastwise, intercoastal, and other domestic trade. Such lower interest rate shall not apply with respect to any period in which the applicant

- (1) Does not continue as its home port a port on the Pacific coast of the United States;
- (2) Operates the vessel in coastwise or other domestic trade other than on the Pacific coast;
- (3) Operates the vessel in intercoastal or foreign trade except to and from ports on the Pacific coast; or
- (4) Having been in business before August 1, 1935, and having changed his principal place of business to a place on the Pacific coast after such date, maintains his principal place of business at any place on the Pacific coast.

TITLE VI—OPERATING-DIFFERENTIAL SUBSIDY

Sec. 601. (a) The Commission is authorized and directed to consider the application of any citizen of the United States for financial aid in the operation of a vessel or vessels, which are to be used in an essential service in the foreign commerce of the United States. No such application shall be approved by the Commission unless it determines that (1) the operation of such vessel or vessels in such service, route, or line is required to meet foreign-flag competition and to promote the foreign commerce of the United States, and that such vessel or vessels were built in the United States, or have been documented under the laws of the United States not later than February 1, 1928, or actually ordered and under construction for the account of citizens of the United States prior to such date; (2) the applicant owns, or can and will build or purchase, a vessel or vessels of the size, type, speed, and number, and with the proper equipment required to enable him to operate and maintain the service, route, or line, in such manner as may be necessary to meet competitive conditions, and to promote foreign commerce; (3) the applicant possesses the ability, experience, financial resources, and other qualifications necessary to enable him to conduct the proposed operations of the vessel or vessels as to meet competitive conditions and promote foreign commerce; (4) the granting of the aid applied for is necessary to place the proposed operations of the vessel or vessels on a parity with those of foreign competitors, and is reasonably calculated to carry out effectively the purposes and policy of this Act.

(b) Every application for an operating-differential subsidy under the provisions of this title shall be accompanied by statements disclosing the names of all persons having any pecuniary interest, direct or indirect, in such application, or in the ownership or use of the vessel or vessels, routes, or lines covered thereby, and the nature

and extent of any such interest, together with such financial and other statements as may be required by the Commission. All such statements shall be under oath or affirmation and in such form as the Commission shall prescribe. Any person who, in an application for financial aid under this title or in any statement required to be filed therewith, willfully makes any untrue statement of a material fact, shall be guilty of a misdemeanor.

SEC. 602. No contract for an operating-differential subsidy shall be made by the Commission for the operation of a vessel or vessels to meet foreign competition, except direct foreign-flag competition, until and unless the Commission, after a full and complete investigation and hearing, shall determine that an operating subsidy is necessary to meet competition of foreign-flag ships.

SEC. 603. (a) If the Commission approves the application, it may enter into a contract with the applicant for the payment of an operating-differential subsidy determined in accordance with the provisions of subsection (b) of this section, for the operation of such vessel or vessels in such service, route, or line for a period not exceeding twenty years, and subject to such reasonable terms and conditions, consistent with this Act, as the Commission shall require to effectuate the purposes and policy of this Act, including a performance bond with approved sureties, if such bond is required by the Commission.

(b) Such contract shall provide that the amount of the operating-differential subsidy shall not exceed the excess of the fair and reasonable cost of insurance, maintenance, repairs not compensated by insurance, wages and subsistence of officers and crews, and any other items of expense in which the Commission shall find and determine that the applicant is at a substantial disadvantage in competition with vessels of the foreign country hereinafter referred to, in the operation under United States registry of the vessel or vessels covered by the contract, over the estimated fair and reasonable cost of the same items of expense (after deducting therefrom any estimated increase in such items necessitated by features incorporated pursuant to the provisions of section 501 (b)) if such vessel or vessels were operated under the registry of a foreign country whose vessels are substantial competitors of the vessel or vessels covered by the contract.

(c) The amount of such subsidy shall be determined and payable on the basis of a final accounting made as soon as practicable after the end of each year or other period fixed in the contract. The Commission may provide for in the contract, or otherwise approve, the payment from time to time during any such period of such amounts on account as it deems proper. Such payments on account shall in no case exceed 75 per centum of the amount estimated to have accrued on account of such subsidy, and shall be made only after there has been furnished to the Commission such security as it determines to be reasonable and necessary to insure the refund of any overpayment.

No such operating-differential subsidy shall be paid until the contractor shall have furnished evidence satisfactory to the Commission that the wages prescribed in accordance with subsection 801 (a) of this Act have been paid to the ship's personnel.

Sec. 604. If in the case of any particular foreign-trade route the Commission finds the subsidy provided for in this part of this title in any respect inadequate to offset the effect of governmental aid paid to foreign competitors, it may grant such additional subsidy as it determines to be necessary for that purpose: *Provided*, That no such additional subsidy shall be granted, and no part thereof paid, except upon an affirmative vote of all the members of the Commission.

Sec. 605. (a) No operating-differential subsidy shall be paid for the operation of any vessel on a voyage on which it engages in coastwise or intercoastal trade: *Provided, however*, That such subsidy may be paid on a round-the-world voyage or a round voyage from the west coast of the United States to a European port or ports or a round voyage from the Atlantic coast to the Orient which includes intercoastal ports of the United States or a voyage in foreign trade on which the vessel may stop at an island possession or island territory of the United States, and if the subsidized vessel earns any gross revenue on the carriage of mail, passengers, or cargo by reason of such coastal or intercoastal trade the subsidy payment for the entire voyage shall be reduced by an amount which bears the same ratio to the subsidy otherwise payable as such gross revenue bears to the gross revenue derived from the entire voyage. No vessel operating on the Great Lakes or on the inland waterways of the United States shall be considered for the purposes of this Act to be operating in foreign trade.

(b) No operating-differential subsidy shall be paid for the operation of a vessel that is more than twenty years of age unless the Commission finds that it is in the public interest to grant such financial aid for the operation of such vessel and enters a formal order thereon, and the Commission shall include in each annual report a full report covering each case in which such exception is made, with the reasons therefor.

(c) No contract shall be made under this title with respect to a vessel to be operated on a service, route, or line served by citizens of the United States which would be in addition to the existing service, or services, unless the Commission shall determine after proper hearing of all parties that the service already provided by vessels of United States registry in such service, route, or line is inadequate, and that in the accomplishment of the purposes and policy of this Act additional vessels should be operated thereon; and no contract shall be made with respect to a vessel operated or to be operated in a service, route, or line served by two or more citizens of the United States with vessels of United States registry, if the Commission shall determine the effect of such a contract would be to give undue advantage or be unduly prejudicial, as between citizens of the United States, in the operation of vessels in competitive services, routes, or lines, unless following public hearing, due notice of which shall be given to each line serving the route, the Commission shall find that it is necessary to enter into such contract in order to provide adequate service by vessels of United States registry. The Commission, in determining for the purposes of this section whether services are competitive, shall take into consideration the type, size, and speed of the vessels employed, whether passenger or cargo, or combination

passenger and cargo, vessels, the ports or ranges between which they run, the character of cargo carried, and such other facts as it may deem proper.

Sec. 806. Every contract for an operating-differential subsidy under this title shall provide (1) that the amount of the future payments to the contractor shall be subject to review and readjustment from time to time, but not more frequently than once a year, at the instance of the Commission or of the contractor. If any such readjustment cannot be reached by mutual agreement, the Commission, on its own motion or on the application of the contractor, shall, after a proper hearing, determine the facts and make such readjustment in the amount of such future payments as it may determine to be fair and reasonable and in the public interest. The testimony in every such proceeding shall be reduced to writing and filed in the office of the Commission. Its decision shall be based upon and governed by the changes which may have occurred since the date of the said contract, with respect to the items theretofore considered and on which such contract was based, and other conditions affecting shipping, and shall be promulgated in a formal order, which shall be accompanied by a report in writing in which the Commission shall state its findings of fact; (2) that the compensation to be paid under it shall be reduced, under such terms and in such amounts as the Commission shall determine, for any periods in which the vessel or vessels are laid up; (3) that if the Commission shall determine that a change in the service, route, or line, which is receiving an operating-differential subsidy under this title, is necessary in the accomplishment of the purposes of this Act, it may make such change upon such readjustment of payments to the contractor as shall be arrived at by the method prescribed in clause (1) of these conditions; (4) that if at any time the contractor receiving an operating-differential subsidy claims that he cannot maintain and operate his vessels on such service, route, or line, with a reasonable profit upon his investment, and applies to the Commission for a modification or rescission of his contract to maintain such service, route, or line, and the Commission determines that such claim is proved, the Commission shall modify or rescind such contract and permit the contractor to withdraw such vessels from such service, route, or line, upon a date fixed by the Commission, and upon the date of such withdrawal the further payment of the operating-differential subsidy shall cease and the contractor be discharged from any further obligation under such contract; (5) that when at the end of any five-year period during which an operating-differential subsidy has been paid, and when prior to the end of any such five-year period the contract shall be terminated, if the net profit of the contractor on his subsidized vessels and services incident thereto during such period or time, after deduction of depreciation charges based upon a twenty-year life expectancy of the subsidized vessels, has exceeded 10 per centum per annum upon the contractor's capital investment necessarily employed in the operation of the subsidized vessels, services, routes, and lines, the contractor shall pay to the United States an amount equal to one-half of such profits in excess of 10 per centum per annum as partial or complete reimbursement for operating-differential-subsidy payments received by the contractor for such five-year period, but the amount of exces-

sive profit so recaptured shall not in any case exceed the amount of the operating-differential-subsidy payments theretofore made to the contractor for such period under such contract and the repayment of such reimbursement to the Commission shall be subject to the provisions of section 607; (6) that the contractor shall conduct his operations with respect to the vessel's services, routes, and lines covered by his contract in the most economical and efficient manner, but with due regard to the wage and manning scales and working conditions prescribed by the Commission as provided in title III; and (7) that whenever practicable, the operator shall use only articles, materials, and supplies of the growth, production, and manufacture of the United States, as defined in section 506a herein, except when it is necessary to purchase supplies and equipment outside the United States to enable such vessel to continue and complete her voyage, and the operator shall perform repairs to subsidized vessels within the continental limits of the United States, except in an emergency.

SEC. 607. (a) Every contract for an operating-differential subsidy made under authority of this title shall provide that the contractor shall be entitled to annually withdraw from net earnings of subsidized vessels and services incident thereto as profit, if the contractor is a natural person or a partnership, or may pay to its shareholders or stockholders, as dividends, if the contractor is an association or corporation, a sum not in excess of 10 per centum per annum on the contractor's capital necessarily employed in his business, except subject to the further provisions of this section which likewise shall be incorporated in such contract.

(b) To insure the prompt payment of the contractor's obligations to the United States and the replacement of the contractor's subsidized vessels as may be required, the contractor shall create and maintain, out of gross earnings, during the life of such contract, a "capital reserve fund", in such depository or depositories as may be approved by the Commission. In this fund the contractor shall deposit, annually or oftener, as the Commission may require, an amount equal to the annual depreciation charges on the contractor's vessels on which the operating differential is being paid, such depreciation charges to be computed on a twenty-year life expectancy of the subsidized vessels: *Provided, however,* That if, during any accounting year, the annual depreciation charges on the contractor's line of subsidized vessels has not been earned, in whole or in part, over and above the annual expense of operation of such vessels (exclusive of said annual depreciation thereon), the contractor shall not be required to deposit in his capital reserve fund for such accounting year a sum in excess of the amount of annual depreciation actually earned during that year but shall make up any and all deficiencies in his capital reserve fund as soon as the earnings of his subsidized vessels in excess of annual expenses of operation shall permit. The proceeds of all insurance indemnities received by the contractor on account of the total loss of any subsidized vessel shall also be deposited in the capital reserve fund.

The contractor shall also deposit in the capital reserve fund, from time to time, such percentage of the annual net profits of the contractor's business covered by the contract as the Commission shall determine is necessary to further build up a fund for replacement

of the contractor's subsidized ships; but the Commission shall not require the contractor to make such deposit of the contractor's net profits in the capital reserve fund unless the cumulative net profits of the contractor, at the time such deposit is to be made, shall be in excess of 10 per centum per annum from the date the contract was executed. From the capital reserve fund so created, the contractor may pay the principal, when due, on all notes secured by mortgage on the subsidized vessels and may make disbursements for the purchase of replacement vessels or reconstruction of vessels or additional vessels to be employed by the contractor on an essential foreign-trade line, route, or service approved by the Commission, but payments from the capital reserve fund shall not be made for any other purpose.

(c) To attain the public objects for which the financial aid provided for in such contract is extended and to insure the continued maintenance and successful operation of the subsidized vessels, the contractor shall create and maintain, during the life of such contract, a "special reserve fund" in such depository or depositories as the Commission shall approve.

In this reserve fund, the contractor shall deposit annually the profits earned by the business of the subsidized vessels and services incident thereto in excess of 10 per centum per annum and in excess of the percentage of profits deposited in the capital reserve fund, as provided in subsection (b) of this section. From the special reserve fund the contractor may make the following disbursements and no others:

(1) Reimbursement to the contractor's general funds for any losses on the operation of the subsidized vessels and services incident thereto sustained subsequent to the execution of the operating-differential-subsidy contract;

(2) Reimbursement to the contractor's general funds for current operating losses on completed voyages of subsidized vessels whenever the Commission shall determine it is improbable that such current losses will not be made up by profits on other voyages during the current year;

(3) Payment of amounts due from the contractor to the Commission for reimbursement as provided in clause 5 of section 606, but such reimbursement shall be deferred until the amount on deposit in the special reserve fund shall be sufficiently in excess of 5 per centum of the capital necessarily employed in the business so that payment of such reimbursement to the Commission will not reduce the special reserve fund below a sum equal to such 5 per centum of capital necessarily employed in the business: *Provided, however,* That such reimbursement to the Commission, if so deferred, shall be payable from the special reserve fund or other funds upon termination of the contract and the United States shall then have a preferred lien on the special reserve fund for such deferred reimbursement;

(4) After reimbursement to the contractor's general funds of all operating losses has been made, as provided in clause 1, and after reimbursement to the Commission of all amounts due from the contractor, as determined under clause 5 of section 606, if the amount accumulated in the special reserve fund shall then be in excess of 5

per centum of the capital necessarily employed in the business, the contractor may, if the Commission approves, withdraw some or all of such excess reserve and pay the sum so withdrawn into the contractor's general funds or distribute the sum so withdrawn as a special dividend to the contractor's shareholders or stockholders or as a bonus to officers or employees, as the contractor may determine.

(d) The Commission shall adopt and prescribe rules and regulations for the administration of the reserve funds contemplated by this section and shall include therein a definition of the term "net earnings" and the term "capital necessarily employed in the business", as such terms are employed in this section: *Provided, however,* That the term "net earnings" shall take into account as a proper accounting charge to operation of vessels expense, an annual depreciation charge on the vessels, computed on the economic life of the vessel being twenty years and the term "capital necessarily employed in the business" shall not include borrowed capital.

Upon application of the contractor, the Commission, in its discretion, may permit the investment by the operator of some or all of the contractor's capital and special reserve fund in approved interest-bearing securities, approved by the Commission, upon condition that the interest on such securities shall be deposited in the capital reserve fund.

(e) If, during any accounting year, the contractor's general funds have become seriously depleted due to operating losses on the subsidized vessels and the special reserve fund has been exhausted, the Commission may, in its discretion, permit the contractor temporarily to withdraw from his capital reserve fund such excess therein on deposit over and above the amount necessary to pay the principal amount currently due or about to become due on the contractor's mortgage obligation on the subsidized vessels: *Provided, however,* That the sum so withdrawn shall be repaid to the capital reserve fund as soon as the contractor's financial condition shall permit.

(f) The earnings of any contractor receiving an operating-differential subsidy under authority of this Act, which are deposited in the contractor's reserve funds as provided in this section, except earnings withdrawn from the "special reserve funds" and paid into the contractor's general funds or distributed as dividends or bonuses as provided in paragraph 4 of subsection (c) of this section, shall be exempt from all Federal taxes.

Sec. 608. No contract executed under this title or any interest therein shall be sold, assigned, or transferred, either directly or indirectly, or through any reorganization, merger, or consolidation, nor shall any agreement or arrangement be made by the holder whereby the maintenance, management, or operation of the service, route, line, vessel, or vessels is to be performed by any other person, without the written consent of the Commission. If it consents to such agreement or arrangement, the agreement or arrangement shall make provision whereby the person undertaking such maintenance, management, or operation agrees to be bound by all of the provisions of the contract and of this Act applicable thereto, and the rules and regulations prescribed pursuant to this Act. If the holder of any such contract shall voluntarily sell such contract or any interest therein, or make such assignment, transfer, agreement, or arrangement

whereby the maintenance, management, or operation of the service, route, line, vessel, or vessels is to be performed by any other person, without the consent of the Commission, or if the operation of the service, route, line, or vessel, shall pass out of the direct control of the holder of such contract by reason of any voluntary or involuntary receivership or bankruptcy proceedings, the Commission shall have the right to modify or rescind such contract, without further liability thereon by the United States, and is hereby vested with exclusive jurisdiction to determine the purposes for which any payments made by it under such contract shall be expended.

Sec. 609. (a) The Commission shall withhold the payment of operating-differential subsidy while any contractor therefor is in default in any payments due on account of construction-loan, ship-sales mortgage notes, or any other obligation due the United States, and shall apply the amount so withheld to the satisfaction of such debt.

(b) If the holder of any contract under this title has filed a petition under any provision of the Bankruptcy Act or has applied for the appointment of a receiver or is in default under any provisions of a ship mortgage given to the United States, the Commission may cancel or modify the contract as it finds advisable, and is hereby granted exclusive power to determine the purpose for which any payments made by it under such contract shall be expended.

Sec. 610. An operating-differential subsidy shall not be paid under authority of this title on account of the operation of any vessel which does not meet the following requirements: (1) The vessel shall be of steel or other acceptable metal, shall be propelled by steam or motor, shall be as nearly fireproof as practicable, shall be built in a domestic yard or shall have been documented under the laws of the United States not later than February 1, 1928, or actually ordered and under construction for the account of citizens of the United States prior to such date, and shall be documented under the laws of the United States, during the entire life of the subsidy contract; and (2) if the vessel shall be constructed after the passage of this Act it shall be either a vessel constructed according to plans and specifications approved by the Commission and the Secretary of the Navy, with particular reference to economical conversion into an auxiliary naval vessel, or a vessel approved by the Commission and the Navy Department as otherwise useful to the United States in time of national emergency.

TITLE VII—PRIVATE CHARTER OPERATION

Sec. 701. Whenever the Commission shall find and determine, and such finding and determination shall be approved by the President of the United States, that the national policy declared in section 101 of this Act, and the objectives set forth in section 210 of this Act, cannot be fully realized within a reasonable time, in whole or in part, under the provisions of titles V and VI, the Commission is hereby authorized and directed to complete its long-range program previously adopted as hereinafter provided in this title.

Sec. 702. The Commission is authorized to have constructed in domestic yards, on the Atlantic and Gulf and Pacific coasts, such new

vessels as it shall determine may be required to carry out the objects of this Act, and to have old vessels reconditioned or remodeled in such yards: *Provided*, That if satisfactory contracts for such new construction or reconstruction, in accordance with the provisions of this Act, cannot be obtained from private shipbuilders, the Commission is authorized to have such vessels constructed, reconditioned, or remodeled in United States navy yards.

Sec. 703. (a) No contract for the building of a new vessel, or for the reconditioning or reconstruction of any other vessel, shall be made by the Commission with any private shipbuilder, except after due advertisement and upon sealed competitive bids.

(b) All contracts for the construction, reconditioning, or reconstruction of a vessel or vessels by a private shipbuilder under authority of this title shall be subject to all the provisions and requirements prescribed in title V of this Act with respect to contracts with a private shipbuilder for the construction of vessels under authority of that title.

(c) All bids required by the Commission for the construction, reconstruction, or reconditioning of vessels, and for the chartering of the Commission's vessels hereinafter provided for, shall be opened at the time, hour, and place stated in the advertisement for bids, and all interested persons, including representatives of the press, shall be permitted to attend, and the results of such bidding shall be publicly announced.

Sec. 704. All vessels transferred to or otherwise acquired by the Commission in any manner may be chartered or sold by the Commission pursuant to the further provisions of this Act. All vessels transferred to the Commission by this Act and now being operated by private operators on lines in foreign commerce of the United States may be temporarily operated by the Commission for its account by private operators until such time and upon such operating agreements as the Commission may deem advantageous, but the Commission shall arrange as soon as practicable to offer all such lines of vessels for charter as hereinafter provided and all operation of the Commission's vessels by private operators under such operating agreements shall be discontinued within one year after the passage of this Act.

Sec. 705. As soon as practicable after the passage of this Act, and continuing thereafter, the Commission shall arrange for the employment of its vessels in steamship lines on such trade routes, exclusively serving the foreign trade of the United States, as the Commission shall determine are necessary and essential for the development and maintenance of the commerce of the United States and the national defense: *Provided*, That such needs are not being adequately served by existing steamship lines privately owned and operated by citizens of the United States and documented under the laws of the United States. It shall be the policy of the Commission to encourage private operation of each essential steamship line now owned by the United States by selling such lines to citizens of the United States in the manner provided in section 7 of the Merchant Marine Act, 1920, and in strict accordance with the provisions of section 5 of said Act, or by demising its vessels on bare-boat charter to citizens of the United States who shall agree to maintain such line or lines in the manner hereinafter provided.

SEC. 706. (a) The Commission shall not charter its vessels to private operators except upon competitive sealed bids submitted in strict compliance with all the terms and conditions of a public advertisement soliciting such bids. Each and every advertisement for bids to charter the Commission's vessels shall state the number, type, and tonnage of the vessels the Commission is offering for bare-boat charter for operation as a steamship line on a designated trade route, the minimum number of sailings that will be required, the length of time for which the charter will be given, and all other information the Commission shall deem necessary for the information of prospective bidders.

(b) The Commission shall have authority to, and shall announce in its advertisements for bids that the Commission reserves the right to, reject any and all bids submitted.

SEC. 707. (a) The Commission shall award the charter to the bidder proposing to pay the highest monthly charter hire unless the Commission shall reject such bid for the reasons set forth in subsection (b) of this section.

(b) The Commission may reject the highest or most advantageous or any other bid, if, in the Commission's discretion, the charter hire offered is deemed too low, or the Commission determines that the bidder lacks sufficient capital, credit, or experience to operate successfully the line; but the reason or reasons for rejection of any bid, upon request of the bidder, shall be stated to such bidder in writing.

(c) If the highest bid is rejected, the Commission may award the charter to the next highest bidder, or may reject all bids and readvertise the line: *Provided, however,* That the Commission may operate the line until conditions appear to be more favorable for a reoffering of the line for private charter.

SEC. 708. The Commission may, if in its discretion financial aid is deemed necessary, enter into a contract with any charterer of its vessels for payment to such charterer of an operating-differential subsidy upon the same terms and conditions and subject to the same limitations and restrictions as are elsewhere provided in this Act with respect to payments of such subsidies to operators of privately owned vessels.

SEC. 709. (a) Every charter made by the Commission pursuant to the provisions of this title shall provide that whenever, at the end of any calendar year subsequent to the execution of such charter, the cumulative net voyage profits (after payment of the charter hire reserved in the charter and payment of the charterer's fair and reasonable overhead expenses applicable to operation of the chartered vessels) shall exceed 10 per centum per annum on the charterer's capital necessarily employed in the business of such chartered vessels, the charterer shall pay over to the Commission, as additional charter hire, one-half of such cumulative net voyage profit in excess of 10 per centum per annum: *Provided,* That the cumulative net profit so accounted for shall not be included in any calculation of cumulative net profit in subsequent years.

(b) Every charter shall contain a definition of the terms "net voyage profit" and "fair and reasonable overhead expenses", and "capital necessarily employed", as said terms are used in subsection (a) of this section, setting forth the formula for determining such

profit and overhead expense and capital necessarily employed, which definitions shall have been previously approved by the Commission and published in the advertisement for bids for such charter.

SEC. 710. Every charterer of the Commission's vessels shall be required to deposit with the Commission an undertaking with approved sureties as security for the faithful performance of all of the conditions of the charter, including indemnity against liens on the chartered vessels, in such amount as the Commission shall require.

SEC. 711. The charters to be made by the Commission pursuant to the provisions of this title shall demise the vessels to the charterer subject to all usual conditions contained in bare-boat charters, and until January 1, 1940, shall be for terms of three years or less as the Commission may decide: *Provided*, That after January 1, 1940, charters may be executed by the Commission for such terms as the experience gained by the Commission shall indicate are to the best interests of the United States and the merchant marine.

SEC. 712. Every charter shall provide—

(a) That the charterer shall carry on the chartered vessels, at his own expense, policies of insurance covering all marine and port risks, protection and indemnity risks, and all other hazards and liabilities, in such amounts, in such form, and in such insurance companies as the Commission shall require and approve, adequate to cover all damages claimed against and losses sustained by the chartered vessels arising during the life of the charter: *Provided*, That in accordance with existing law, some or all of such insurance risks may be underwritten by the Commission itself as, in its discretion, it may determine.

(b) That the charterer shall at its own expense keep the chartered vessel in good state of repair and in efficient operating condition and shall at its own expense make any and all repairs as may be required by the Commission.

(c) That the Commission shall have the right to inspect the vessel at any and all times to ascertain its condition.

(d) That in any national emergency as proclaimed by the President of the United States, the Commission may terminate the charter without cost to the United States, upon such notice to the charterers as the President of the United States shall determine.

SEC. 713. In the awarding of charters, the Commission shall take in consideration the charterer's financial resources and credit standing, practical experience in the operation of vessels, and any other factors that would be considered by a prudent businessman in entering into a transaction involving a large investment of his capital; and the Commission is directed to refrain from chartering its vessels to any person appearing to lack sufficient capital, credit, and experience to operate successfully the vessel over the period covered by the charter.

SEC. 714. If the Commission shall find that any trade route (determined by the Commission to be an essential trade route as provided in section 211 of this Act) cannot be successfully developed and maintained and the Commission's replacement program cannot be achieved under private operation of such trade route by a citizen of the United States with vessels registered under the laws thereof, without further Government aid in addition to the financial aids

authorized under title V and VI of this Act, the Commission is authorized to have constructed, in private shipyards or in navy yards, the vessel or vessels of the types deemed necessary for such trade route, and to demise such new vessel or vessels on bare-boat charter to the American-flag operator established on such trade route, without advertisement or competition, upon an annual charter hire of not less than 5 per centum of the construction cost of such new vessel or vessels. Such charter may contain an option to the charterer to purchase such vessel or vessels from the Commission, within five years after the execution of the charter, upon the same terms and conditions as are provided in title V for the purchase of new vessels from the Commission with credit on the purchase price for all charter-hire theretofore paid by the purchaser on account of such charter.

TITLE VIII—CONTRACT PROVISIONS

SEC. 801. Every contract executed by the Commission under the provision of titles VI or VII of this Act shall contain provisions requiring (1) that the contractor and every affiliate, domestic agent, subsidiary, or holding company connected with, or directly or indirectly controlling or controlled by, the contractor, to keep its books, records, and accounts, relating to the maintenance, operation, and servicing of the vessels, services, routes, and lines covered by the contract, in such form and under such regulations as may be prescribed by the Commission: *Provided*, That the provisions of this paragraph shall not require the duplication of books, records, and accounts required to be kept in some other form by the Interstate Commerce Commission; (2) that the contractor and every affiliate, domestic agent, subsidiary, or holding company connected with, or directly or indirectly controlling or controlled by, the contractor, to file, upon notice from the Commission, balance sheets, profit and loss statements, and such other statements of financial operations, special report, memoranda of any facts and transactions, which in the opinion of the Commission affect the financial results in, the performance of, or transactions or operations under, such contract; (3) that the Commission shall be authorized to examine and audit the books, records, and accounts of all persons referred to in this section whenever it may deem it necessary or desirable; and (4) that upon the willful failure or refusal of any person described in this section to comply with the contract provisions required by this section, the Commission shall have the right to rescind the contract, and upon such rescission the United States shall be relieved of all further liability on such contract.

SEC. 802. Every contract executed by the Commission under authority of title V of this Act shall provide that:

In the event the United States shall, through purchase or requisition, acquire ownership of the vessel or vessels on which a construction-differential subsidy was paid, the owner shall be paid therefor the fair actual value thereof, but in no event shall such payment exceed the actual depreciated construction cost thereof (together with the actual depreciated cost of capital improvements thereon, but excluding the cost of national-defense features) less the depre-

ciated amount of construction subsidy theretofore paid incident to the construction or reconditioning of such vessel or vessels. In computing the value of such vessel, depreciation shall be computed on each vessel on the schedule adopted by the Bureau of Internal Revenue for income-tax purposes.

The foregoing provision respecting the requisition or the acquisition of ownership by the United States shall run with the title to such vessel or vessels and be binding on all owners thereof.

Sec. 803. It shall be unlawful for any contractor receiving an operating-differential subsidy under title VI or for any charterer under title VII of this Act to employ any person or concern performing or supplying stevedoring, ship-repair, ship-chandler, tow-boat, or kindred services to supply such services to the operator's subsidized or chartered vessels if such contractor, or any subsidiary company, holding company, affiliate company, or associate company of such contractor, or any officer, director, or employee of such contractor, or any member of the immediate family of any such contractor, officer, director, or employee, or any member of the immediate family of any officer, director, or employee, of such subsidiary company, holding company, affiliate company, or associate company of such contractor, owns any pecuniary interest directly or indirectly in the person or concern supplying such services to the contractor's subsidized or chartered vessels or receives any payment or other thing of value directly or indirectly as a result of such employment or services: *Provided*, That, with the express written approval of the Commission, such contractor or a subsidiary company wholly owned by such contractor may perform such services to its own vessels if the profits, if any, of such subsidiary company or companies with respect to such services shall become a part of the earnings of such contractor and shall be accounted for as provided in clause 5 of section 806: *Provided further*, That the contractor may, in the discretion of the Commission, contract with a holding company, affiliate company, or associate company of such contractor for the use of terminal facilities by such contractor, if the contract is approved by the Commission.

Sec. 804. It shall be unlawful for any contractor receiving an operating-differential subsidy under title VI or for any charterer of vessels under title VII of this Act, or any holding company, subsidiary, affiliate, or associate of such contractor or such charterer, or any officer, director, agent, or executive thereof, directly or indirectly, to own, charter, act as agent or broker for, or operate any foreign-flag vessel which competes with any American-flag service determined by the Commission to be essential as provided in section 211 of this Act: *Provided, however*, That under special circumstances and for good cause shown, the Commission may, in its discretion, waive the provisions of this section as to any contractor, by affirmative vote of four of its members, except as otherwise provided in subsection 201 (a).

Sec. 805. (a) It shall be unlawful to award or pay any subsidy to any contractor under authority of title VI of this Act, or to charter any vessel to any person under title VII of this Act, if said contractor or charterer, or any holding company, subsidiary, affiliate, or associate of such contractor or charterer, or any officer, director,

agent, or executive thereof, directly or indirectly, shall own, operate, or charter any vessel or vessels engaged in the domestic intercoastal or coastwise service, or own any pecuniary interest, directly or indirectly, in any person or concern that owns, charters, or operates any vessel or vessels in the domestic intercoastal or coastwise service, without the written permission of the Commission. Every person, firm, or corporation having any interest in such application shall be permitted to intervene and the Commission shall give a hearing to the applicant and the intervenors. The Commission shall not grant any such application if the Commission finds it will result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service or that it would be prejudicial to the objects and policy of this Act: *Provided*, That if such contractor or other person above-described or a predecessor in interest was in bona-fide operation as a common carrier by water in the domestic, intercoastal, or coastwise trade in 1935 over the route or routes or in the trade or trades for which application is made and has so operated since that time or if engaged in furnishing seasonal service only, was in bona-fide operation in 1935 during the season ordinarily covered by its operation, except in either event, as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall grant such permission without requiring further proof that public interest and convenience will be served by such operation, and without further proceedings as to the competition in such route or trade.

If such application be allowed, it shall be unlawful for any of the persons mentioned in this section to divert, directly or indirectly, any moneys, property, or other thing of value, used in foreign-trade operations, for which a subsidy is paid by the United States, into any such coastwise or intercoastal operations; and whosoever shall violate this provision shall be guilty of a misdemeanor.

(b) Whenever any contractor under title VI or title VII receiving an operating-differential subsidy is in default with respect to any mortgage, note, purchase contract, or other obligation to the Commission, or has not maintained, in a manner satisfactory to the Commission, all of the reserves provided for in this Act, the Commission shall have the right to supervise the number and compensation of all officers and employees of the contractor (c) no director, officer, or employee (which terms shall be construed in the broadest sense to include, but not to be limited to, managing trustee or other administrative agent) shall receive from any contractor, holding a contract authorized by title VI or title VII of this act and its affiliate, subsidiary, associate, directly or indirectly, wages, salary, allowances of compensation in any form for personal services which will result in such person's receiving a total compensation for his personal services from such sources exceeding in amount or value \$25,000 per annum, and no such person or concern shall be qualified to receive or thereafter to hold any contract under this part, if such person or concern, its subsidiary, affiliate, or associate pays or causes to be paid, directly or indirectly, wages, salary, allowances, or compensation in any form for personal services which result in such person's receiving a total compensation for his personal services from such sources exceeding in amount or value \$25,000 per annum.

(d) It shall be unlawful, without express written consent of the Commission, for any contractor holding a contract authorized under title VI or VII of this Act to employ any other person or concern as the managing or operating agent of such operator, or to charter any vessel, on which an operating-differential subsidy is to be paid, for operation by another person or concern, and if such charter is made, the person or concern operating the chartered vessel or vessels shall be subject to all the terms and provisions of this Act, including limitations of profits and salaries. No contractor shall receive an operating-differential subsidy for the operation of any chartered vessel save and except during a period of actual emergency determined by the Commission.

(e) It shall be unlawful for any contractor or charterer who holds any contract made under authority of any provision in this Act to employ any Member of Congress, either with or without compensation, as an attorney, agent, officer, or director of such person.

(f) Any willful violation of any provision of this section shall constitute a breach of the contract or charter in force under this Act, and upon determining that such a violation has occurred the Commission may forthwith declare such contract or charter rescinded and any person willfully violating the provisions of this section shall be guilty of a misdemeanor.

Sec. 806. (a) Whoever shall consult with, or enter into an agreement with, or inform any other bidder, or officer, director, executive, agent, or employee of any such other bidder, as to the amount, the terms, or the conditions of any bid submitted to the Commission prior to the public opening of such bids, or enter into any combination, understanding, agreement, or arrangement whatsoever, to prevent the making of any bona-fide bid for any contract or charter under this Act, to induce any other person not to bid for any such contract or charter, or to deprive the United States in any way of the benefit of full, free, and secret competition in the awarding of any such contract or charter shall be guilty of a misdemeanor: *Provided*, That this section shall also apply to bidding for contracts under the provisions of section 504 of this Act.

(b) Whenever any natural person is found guilty in any district court of the United States of any act or acts declared in this Act to constitute a misdemeanor, he shall be punished by a fine of not more than \$10,000, or by imprisonment for not less than one year or more than five years, or by both fine and imprisonment. Whenever any corporation is found guilty of any act or acts declared in this Act to be unlawful, such corporation shall be punished by a fine of not more than \$25,000.

(c) In addition to the punishment prescribed in subsection (a) of this section, any person or corporation convicted of a misdemeanor under the provisions of this Act shall be ineligible, at the discretion of the Commission, to receive any benefits under titles V and VI of this Act, or to receive a charter under title VII of this Act, for a period of five years after conviction.

Sec. 807. It shall be unlawful for any person employed or retained by any shipbuilder or ship operator holding or applying for a contract under the provisions of this Act, or employed or retained by any subsidiary, affiliate, associate, or holding company of such shipbuilder or ship operator, to present, advocate, or oppose

any matter affecting any such shipbuilder or ship operator or any subsidiary, affiliate, associate, or holding company thereof, before the Congress or any Member or committee thereof, or before the Commission, or any other governmental agency or any member, officer, or employee thereof, unless such shipbuilder or ship operator shall have previously filed with the Commission in such form and detail as the Commission shall by rules and regulations or order prescribe as necessary or appropriate in the public interest, a statement of the subject matter in respect of which such person is retained or employed, the nature and character of such retainer or employment, and the amount of compensation received or to be received by such person, directly or indirectly, in connection therewith. It shall be the duty of every such person so employed or retained to file with the Commission within ten days after the close of each calendar month during such retainer or employment, in such form and detail as the Commission shall by rules and regulations or order prescribe as necessary or appropriate in the public interest, a statement of the expenses incurred and the compensation received by such person during such month in connection with such retainer or employment. Whosoever shall violate this provision shall be guilty of a misdemeanor.

Sec. 808. It shall be unlawful for any contractor receiving an operating-differential subsidy under title VI or for any charterer under title VII of this Act unjustly to discriminate in any manner so as to give preference directly or indirectly in respect to cargo in which such contractor or charterer has a direct or indirect ownership, or purchase or vending interest; and whosoever shall violate this provision shall be guilty of a misdemeanor.

Sec. 809. Contracts under this Act shall be entered into so as to equitably serve, insofar as possible, the foreign-trade requirements of the Atlantic, Gulf, and Pacific ports of the United States. In awarding contracts under this Act, preference shall be given to persons who are citizens of the United States and who have the support, financial and otherwise, of the domestic communities primarily interested.

Sec. 810. It shall be unlawful for any contractor receiving an operating-differential subsidy under title VI or for any charterer of vessels under title VII of this Act, to continue as a party to or to conform to any agreement with another carrier or carriers by water, or to engage in any practice in concert with another carrier or carriers by water, which is unjustly discriminatory or unfair to any other citizen of the United States who operates a common carrier by water exclusively employing vessels registered under the laws of the United States on any established trade route from and to a United States port or ports.

No payment or subsidy of any kind shall be paid directly or indirectly out of funds of the United States or any agency of the United States to any contractor or charterer who shall violate this section. Any person who shall be injured in his business or property by reason of anything forbidden by this section may sue therefor in any district court of the United States in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

TITLE IX—MISCELLANEOUS PROVISIONS

SEC. 901. Any officer or employee of the United States traveling on official business overseas or to or from any of the possessions of the United States shall travel and transport his personal effects on ships registered under the laws of the United States where such ships are available unless the necessity of his mission requires the use of a ship under a foreign flag: *Provided*, That the Comptroller General of the United States shall not credit any allowance for travel or shipping expenses incurred on a foreign ship in the absence of satisfactory proof of the necessity therefor.

SEC. 902. (a) It shall be lawful for the Commission to requisition any vessel documented under the laws of the United States, during any national emergency declared by proclamation of the President, and when so taken or used, the owner shall be paid the fair actual value of the vessel at the time of taking, or paid the just compensation for the vessel's use based upon such fair actual value (excluding any national defense features previously paid for by the United States), less a deduction from such fair actual value of any construction differential subsidy allowed under this Act, and in no case shall such fair actual value be enhanced by the causes necessitating the taking. In the case of a vessel taken and used, but not purchased, the vessel shall be restored to the owner in a condition at least as good as when taken, less reasonable wear and tear, or the owner shall be paid an amount for reconditioning sufficient to place the vessel in such condition. The owner shall not be paid for any consequential damages arising from such taking or use.

(b) Except in cases of vessels where a construction differential subsidy has been allowed and paid, in which case the value of the vessel for the purposes of this section shall be established as provided in section 802, the Commission shall ascertain the fair compensation for such taking or use and shall certify to Congress the amount so found by it to be due for appropriation and payment to the person entitled thereto. If the amount found by the Commission to be due is unsatisfactory to the person entitled thereto, such person shall be entitled to sue the United States for the amount of such just compensation and such suit shall be brought in the manner prescribed by paragraph 20 of section 24, or by section 145 of the Judicial Code, as amended (U. S. C., title 28, secs. 41, 250).

SEC. 903. The following Acts and parts of Acts shall stand repealed:

(a) All of the provisions of sections 3 to 8, inclusive, section 10, section 11, section 35, and section 43 of the Shipping Act, 1916, as amended.

(b) All of the provisions of subsection (b) (4) of section 2, section 3, section 11, section 14, and section 35 of the Merchant Marine Act, 1920, as amended.

(c) All of the provisions of sections 201, 301, 302, 401 to 413, inclusive, 601, and 702 of the Merchant Marine Act, 1928, as amended: *Provided*, That any contract lawfully entered into under authority of sections 401 to 413, inclusive, of such Act shall remain in full force and effect as though these sections were not repealed, subject, however, to the further provisions of this Act.

(d) The last sentence in section 3 of the Intercoastal Shipping Act, 1933.

SEC. 904. Whenever the words "United States Shipping Board" or the words "the Board" are used in any prior Act, such Acts are hereby amended so that such words shall be applicable to the United States Maritime Commission.

SEC. 905. When used in this Act—

(a) The words "foreign trade" mean trade between the United States, its Territories or possessions, or the District of Columbia, and a foreign country.

(b) The term "person" includes corporations, partnerships, and associations existing under or authorized by the laws of the United States, or any State, Territory, District, or possession thereof, or of any foreign country.

(c) The words "citizen of the United States" include a corporation, partnership, or association only if it is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916, as amended (U. S. C., title 46, sec. 802).

(d) The word "construction" includes outfitting and equipping.

SEC. 906. If any provisions of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby. This Act may be cited as the Merchant Marine Act, 1936.

SEC. 907. Except as otherwise provided herein this Act shall take effect thirty days after a majority of the members of the Commission have taken the oath of office.

Approved, June 29, 1936.

The Ocean Shipping Act of 1978*

* Pub. L. 95-483, 92 Stat. 1607; 46 U.S.C. §801 (1978).

Public Law 95-483
95th Congress

An Act

To provide for the regulation of rates or charges by certain state-owned carriers in the foreign commerce of the United States, and for other purposes.

Oct. 18, 1978
[H.R. 9998]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Ocean Shipping Act of 1978".

Ocean Shipping
Act of 1978.
46 USC 842 note.

SEC. 2. The first section of the Shipping Act, 1916, as amended (46 U.S.C. 801), is further amended by inserting the following definition of the term "controlled carrier" immediately following the definition of the term "common carrier by water":

"The term 'controlled carrier' means a common carrier by water operating, offering, or proposing to offer service in the foreign commerce of the United States which carrier is or whose operating assets are directly or indirectly owned or controlled by the government under whose registry the vessels of the controlled carrier operate. Ownership or control by such government shall be deemed to exist if a majority portion of the interest in the carrier is owned or controlled in any manner by such government, by any agency of the government, or by any person, corporation, or entity controlled by such government. Ownership or control shall also be deemed to exist if the government has the right to appoint or disapprove the appointment of a majority of the directors or the chief operating or executive officer of the carrier".

"Controlled
carrier."

SEC. 3. Section 18 of the Shipping Act, 1916, as amended (46 U.S.C. 817), is further amended by adding at the end thereof, the following new subsection:

"(c) (1) No controlled carrier subject to this Act shall maintain rates or charges in its tariffs filed with the Commission that are below a level which is just and reasonable, nor shall any such carrier establish or maintain unjust or unreasonable classifications, rules, or regulations in such tariffs. An unjust or unreasonable classification, rule, or regulation means one which results or is likely to result in the carriage or handling of cargo at rates or charges which are below a level which is just and reasonable. The Commission may at any time after notice and hearing, disapprove any rates, charges, classifications, rules, or regulations which the controlled carrier has failed to demonstrate to be just and reasonable. In any proceeding under this subsection, the burden of proof shall be on the controlled carrier to demonstrate that its rates, charges, classifications, rules, or regulations are just and reasonable. Rates, charges, classifications, rules, or regulations filed by a controlled carrier which have been rejected, suspended, or disapproved by the Commission are void, and their use is unlawful.

Notice and
hearing.

"(2) For the purpose of this subsection, in determining whether rates, charges, classifications, rules, or regulations by a controlled carrier are just and reasonable, the Commission may take into account appropriate factors, including, but not limited to, whether: (i) the rates or charges which have been filed or which would result from the pertinent classifications, rules, or regulations are below a level which is fully compensatory to the controlled carrier based upon that carrier's

actual costs or upon its constructive costs, which are hereby defined as the costs of another carrier, other than a controlled carrier, operating similar vessels and equipment in the same or a similar trade; (ii) the rates, charges, classifications, rules, or regulations are the same as or similar to those filed or assessed by other carriers in the same trade; (iii) the rates, charges, classifications, rules, or regulations are required to assure movement of particular cargo in the trade; or (iv) the rates, charges, classifications, rules, or regulations are required to maintain acceptable continuity, level, or quality of common carrier service to or from affected ports.

“(3) Notwithstanding the provisions of subsection (b)(2) of this section, rates, charges, classifications, rules, or regulations of controlled carriers shall not, without special permission of the Commission, become effective within less than thirty days following the date of filing with the Commission. Following the effective date of this subsection, each controlled carrier shall, upon the request of the Commission, file within twenty days of request, with respect to its existing or proposed rates, charges, classifications, rules, or regulations a statement of justification which sufficiently details the controlled carrier's need and purpose for such rates, charges, classifications, rules, or regulations, upon which the Commission may reasonably base its determination of the lawfulness thereof.

“(4) Whenever the Commission is of the opinion that the rates, charges, classifications, rules, or regulations filed by a controlled carrier may be unjust and unreasonable, the Commission may issue an order to the controlled carrier to show cause why such rates, charges, classifications, rules, or regulations should not be disapproved. Pending a determination as to their lawfulness in such a proceeding, the Commission may suspend such rates, charges, classifications, rules, or regulations at any time prior to their effective date. In the case of any rates, charges, classifications, rules, or regulations which have already become effective, the Commission may, upon the issuance of an order to show cause, suspend such rates, charges, classifications, rules, or regulations on not less than sixty days notice to the controlled carrier. No period of suspension hereunder may be greater than one hundred and eighty days. Whenever the Commission has suspended any rates, charges, classifications, rules, or regulations under this provision, the affected carrier may file new rates, charges, classifications, rules, or regulations to take effect immediately during the suspension period in lieu of the suspended rates, charges, classifications, rules, or regulations: *Provided, however,* That the Commission may reject such new rates, charges, classifications, rules, or regulations if it is of the opinion that they are unjust and unreasonable.

“(5) Concurrently with the publication thereof, the Commission shall transmit to the President any order of suspension or final order of disapproval of rates, charges, classifications, rules, or regulations of a controlled carrier subject to the provisions of this subsection. Within ten days after the receipt or the effective date of such Commission order, whichever is later, the President may request the Commission in writing to stay the effect of the Commission's order if he finds that such stay is required for reasons of national defense or foreign policy which reasons shall be specified in the report. Notwithstanding any other provision of law, the Commission shall immediately grant such request by the issuance of an order in which the President's request shall be described. During any such stay, the President shall, whenever practicable, attempt to resolve the matter in controversy by negotiation with representatives of the applicable foreign governments.

“(6) The provisions of this subsection shall not apply to: (i) any controlled carrier of a state whose vessels are entitled by a treaty of the United States to receive national or most-favored-nation treatment; (ii) any controlled carrier of a state which, on the effective date of this subsection, has subscribed to the statement of shipping policy contained in note 1 to annex A of the Code of Liberalization of Current Invisible Operations, adopted by the Council of the Organization for Economic Cooperation and Development; (iii) rates, charges, classifications, rules, or regulations of any controlled carrier in any particular trade which are covered by an agreement approved under section 15 of this Act, other than an agreement in which all of the members are controlled carriers not otherwise excluded from the provisions of this subsection; (iv) rates, charges, classifications, rules, or regulations governing the transportation of cargo by a controlled carrier between the country by whose government it is owned or controlled, as defined herein, and the United States, or any of its districts, territories, or possessions; or (v) a trade served exclusively by controlled carriers.”

SEC. 4. The provisions of this Act, including the amendments made by this Act, shall become effective thirty days after its date of enactment.

Effective date.
46 USC 801 note.

Approved October 18, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-1381 (Comm. on Merchant Marine and Fisheries).

SENATE REPORT No. 95-1260 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD, Vol. 124 (1978):

July 31, considered and passed House.

Oct. 3, considered and passed Senate.

Marine Education and Training Act of 1980*

* Pub. L. 96-453, 94 Stat. 1997; 46 U.S.C. §1119 (1980).

Public Law 96-453
96th Congress

An Act

To amend the Merchant Marine Act, 1936, to revise and reenact the laws pertaining to the United States Merchant Marine Academy and to State maritime academies and for other maritime education and training purposes.

Oct. 15, 1980
{H.R. 5451}

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Maritime Education and Training Act of 1980".

SEC. 2. The Merchant Marine Act, 1936 (46 U.S.C. 1101, et seq.), is amended by adding after title XII the following new title:

Maritime
Education and
Training Act of
1980.
46 USC 1295
note.

"TITLE XIII—MARITIME EDUCATION AND TRAINING

"SEC. 1301. It is the policy of the United States that merchant marine vessels of the United States should be operated by highly trained and efficient citizens of the United States and that the United States Navy and the merchant marine of the United States should work closely together to promote the maximum integration of the total seapower forces of the United States. In furtherance of this policy—

46 USC 1295.

"(1) the Secretary of Commerce is authorized to take the steps necessary to provide for the education and training of citizens of the United States who are capable of providing for the safe and efficient operation of the merchant marine of the United States at all times and as a naval and military auxiliary in time of war or national emergency; and

"(2) the Secretary of Navy, in cooperation with the Assistant Secretary of Commerce for Maritime Affairs and the head of each State maritime academy, shall assure that the training of future merchant marine officers at the United States Merchant Marine Academy and at the State maritime academies includes programs for naval science training in the operation of merchant marine vessels as a naval and military auxiliary and that naval officer training programs for the training of future officers, insofar as possible, be maintained at designated maritime academies consistent with United States Navy standards and needs.

"SEC. 1302. For purposes of this title—

Definitions.
46 USC 1295a.

"(1) the term 'Secretary' means the Secretary of Commerce;

"(2) the term 'Academy' means the United States Merchant Marine Academy located at Kings Point, New York which is maintained under section 1303;

"(3) the term 'State maritime academy' means any maritime academy or college which is assisted under section 1304 and which is sponsored by any State or territory of the United States or, in the case of a regional maritime academy or college, sponsored by any group of States or territories of the United States, or both; and

"(4) the term 'merchant marine officer' means any person who holds a license issued by the United States Coast Guard which authorizes service—

“(A) as a master, mate, or pilot on board any vessel of 1,000 gross tons or more which is documented under the laws of the United States and which operates on the oceans or on the Great Lakes; or

“(B) as an engineer officer on board any vessel propelled by machinery of 4,000 horsepower or more which is documented under the laws of the United States.

46 USC 1295b.

“Sec. 1303. (a) The Secretary shall maintain the Academy for providing instruction to individuals to prepare them for service in the merchant marine of the United States.

Cadet
appointees,
resident
requirements.

“(b)(1) Each Senator and Member of the House of Representatives, the Panama Canal Commission, the Governor of the Northern Mariana Islands, and the Governor of American Samoa (until a delegate to the House of Representatives from American Samoa takes office) may nominate for appointment as a cadet at the Academy any individual who is

“(A) a citizen of the United States or a national of the United States; and

“(B) a resident of the State represented by such Senator if the individual is nominated by a Senator, a resident of the State in which the congressional district represented by such Member of the House of Representatives is located if the individual is nominated by a Member of the House of Representatives (or a resident of Guam, the Virgin Islands, the District of Columbia, the Commonwealth of Puerto Rico, or American Samoa if the individual is nominated by a Member of the House of Representatives representing such area), a resident of the area or installation described in paragraph (3)(A)(ii), or a son or daughter of the personnel described in such paragraph, if the individual is nominated by the Panama Canal Commission, a resident of the Northern Mariana Islands if the individual is nominated by the Governor of the Northern Mariana Islands, or a resident of American Samoa if the individual is nominated by the Governor of American Samoa.

Minimum
requirements
and competitive
system.

“(2)(A) The Secretary shall establish minimum requirements for the individuals nominated pursuant to paragraph (1) and shall establish a system of competition for the selection of individuals qualified for appointment as cadets at the Academy.

“(B) Such system of competition shall determine the relative merit of appointing each such individual to the Academy through the use of competitive examinations, an assessment of the academic background of the individual, and such other factors as are considered effective indicators of motivation and the probability of successful completion of training at the Academy.

Positions,
allocation.

“(3)(A) Qualified individuals nominated pursuant to paragraph (1) shall be selected each year for appointment as cadets at the Academy to fill positions allocated as follows:

“(i) Positions shall be allocated each year for individuals who are residents of each State and are nominated by the Members of the Congress from such State in proportion to the representation in Congress from that State.

“(ii) Two positions shall be allocated each year for individuals nominated by the Panama Canal Commission who are sons or daughters of residents of any area or installation located in the Republic of Panama which is made available to the United States pursuant to the Panama Canal Treaty of 1977, the agreements relating to and implementing that Treaty, signed September 7, 1977, and the Agreement Between the United States of America

and the Republic of Panama Concerning Air Traffic Control and Related Services, concluded January 8, 1979, and sons or daughters of personnel of the United States Government and the Panama Canal Commission residing in the Republic of Panama, nominated by the Panama Canal Commission.

"(iii) One position shall be allocated each year for an individual who is a resident of Guam and is nominated by the Delegate to the House of Representatives from Guam.

"(iv) One position shall be allocated each year for an individual who is a resident of the Virgin Islands and is nominated by the Delegate to the House of Representatives from the Virgin Islands.

"(v) One position shall be allocated each year for an individual who is a resident of the Northern Mariana Islands and is nominated by the Governor of the Northern Mariana Islands.

"(vi) One position shall be allocated each year for an individual who is a resident of American Samoa and is nominated by the Governor of American Samoa (until a delegate to the House of Representatives from American Samoa takes office).

"(vii) Four positions shall be allocated each year for individuals who are residents of the District of Columbia and are nominated by the Delegate to the House of Representatives from the District of Columbia.

"(viii) One position shall be allocated each year for an individual who is a resident of the Commonwealth of Puerto Rico and is nominated by the Resident Commissioner to the United States from Puerto Rico.

"(B) The Secretary shall make appointments of qualified individuals to fill the positions allocated pursuant to subparagraph (A) (from among the individuals nominated pursuant to paragraph (1)) in the order of merit determined pursuant to paragraph (2)(B) among residents of each State, Guam, the Virgin Islands, the Northern Mariana Islands, American Samoa, the District of Columbia, and the Commonwealth of Puerto Rico and among individuals nominated by the Panama Canal Commission.

Merit-based
appointment.

"(C) If positions are not filled after the appointments are made pursuant to subparagraph (B), the Secretary shall make appointments of qualified individuals to fill such positions from among all individuals nominated pursuant to paragraph (1) in the order of merit determined pursuant to paragraph (2)(B) among all such individuals.

"(D) In addition, the Secretary may each year appoint without competition as cadets at the Academy not more than 40 qualified individuals possessing qualities deemed to be of special value to the Academy. In making such appointments the Secretary shall attempt to achieve a national demographic balance at the Academy.

Non-competitive
appointments.

"(E) No preference shall be granted in selecting individuals for appointment as cadets at the Academy because one or more members of the immediate family of any such individual are alumni of the Academy.

"(F) Any citizen of the United States selected for appointment pursuant to this paragraph must agree to apply for midshipman status in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve) before being appointed as a cadet at the Academy.

"(G) For purposes of this paragraph, the term 'State' means the several States.

"State."

"(4)(A) In addition to paragraph (3), the Secretary may permit, upon designation by the Secretary of the Interior, individuals from

the Trust Territory of the Pacific Islands to receive instruction at the Academy.

"(B) Not more than 4 individuals may receive instruction under this paragraph at any one time.

"(C) Any individual receiving instruction under the authority of this paragraph shall receive the same allowances and shall be subject to the same rules and regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as cadets at the Academy appointed from the United States, subject to such exceptions as shall be jointly agreed upon by the Secretary and the Secretary of the Interior.

"(5)(A) In addition to paragraphs (3) and (4), the President may designate individuals from nations located in the Western Hemisphere other than the United States to receive instruction at the Academy.

"(B) Not more than 12 individuals may receive instruction under this paragraph at any one time, and not more than 2 individuals receiving instruction under this paragraph at any one time may be from the same nation.

"(C) Any individual receiving instruction under this subparagraph is entitled to the same allowances and shall be subject to the same rules and regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as cadets at the Academy appointed from the United States.

"(6)(A) In addition to paragraphs (3), (4), and (5), the Secretary may permit, upon approval of the Secretary of State, individuals from nations other than the United States to receive instruction at the Academy.

"(B) Not more than 30 individuals may receive instruction under this paragraph at any one time.

"(C) The Secretary shall insure that each nation from which an individual comes to receive instruction under this paragraph shall reimburse the Secretary for the cost of such instruction (including the same allowances as received by cadets at the Academy appointed from the United States) as determined by the Secretary.

"(D) Any individual receiving instruction at the Academy under this paragraph shall be subject to the same rules and regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as cadets at the Academy appointed from the United States.

"(7) Any individual appointed as a cadet to the Academy under paragraph (3), or receiving instruction at the Academy under paragraph (4), (5), or (6), is not entitled to hold any license authorizing service on any merchant marine vessel of the United States solely by reason of graduation from the Academy.

"(c) Any citizen of the United States who is appointed as a cadet at the Academy may be appointed by the Secretary of the Navy as a midshipman in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve).

"(d) The Secretary shall provide to any cadet at the Academy all required uniforms and textbooks and allowances for transportation (including reimbursement of traveling expenses) while traveling under orders as a cadet of the Academy.

"(e)(1) Each individual appointed as a cadet at the Academy after the date occurring 6 months after the effective date of the Maritime Education and Training Act of 1980, who is a citizen of the United States, shall as a condition of appointment to the Academy sign an agreement committing such individual—

"(A) to complete the course of instruction at the Academy, unless the individual is separated by the Academy;

"(B) to fulfill the requirements for a license as an officer in the merchant marine of the United States on or before the date of graduation from the Academy of such individual;

"(C) to maintain a license as an officer in the merchant marine of the United States for at least 6 years following the date of graduation from the Academy of such individual;

"(D) to apply for an appointment as, to accept if tendered an appointment as, and to serve as a commissioned officer in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve), the United States Coast Guard Reserve, or any other Reserve unit of an armed force of the United States, for at least 6 years following the date of graduation from the Academy of such individual;

Commissioned
officer service
commitment.

"(E) to serve the foreign and domestic commerce and the national defense of the United States for at least 5 years following the date of graduation from the Academy—

Foreign and
domestic
commerce
service.

"(i) as a merchant marine officer serving on vessels documented under the laws of the United States or on vessels owned and operated by the United States or by any State or territory of the United States;

"(ii) as an employee in a United States maritime-related industry, profession, or marine science (as determined by the Secretary), if the Secretary determines that service under clause (i) is not available to such individual;

"(iii) as a commissioned officer on active duty in an armed force of the United States or in the National Oceanic and Atmospheric Administration; or

"(iv) by combining the services specified in clauses (i), (ii), and (iii); and

"(F) to report to the Secretary on the compliance by the individual to this paragraph.

Report.

"(2) If the Secretary determines that any individual who has attended the Academy for not less than 2 years has failed to fulfill the part of the agreement (required by paragraph (1)) described in paragraph (1)(A), such individual may be ordered by the Secretary of the Navy to active duty in the United States Navy to serve for a period of time not to exceed 2 years. In cases of hardship as determined by the Secretary, the Secretary may waive this paragraph.

Waiver.

"(3) If the Secretary determines that any individual has failed to fulfill any part of the agreement (required by paragraph (1)) described in subparagraphs (B), (C), (D), (E), or (F) of paragraph (1), such individual may be ordered to active duty to serve a period of time not less than 3 years and not more than the unexpired portion (as determined by the Secretary) of the service required by subparagraph (E) of such paragraph. The Secretary, in consultation with the Secretary of Defense and the Secretary of Transportation, shall determine in which service the individual shall be ordered to active duty to serve such period of time. In cases of hardship as determined by the Secretary, the Secretary may waive this paragraph.

Active duty
appointment.

Waiver.

"(4) The Secretary may defer the service commitment of any individual pursuant to subparagraph (E) of paragraph (1) (as specified in the agreement required by such paragraph) for a period of not more than 2 years if such individual is engaged in a graduate course of study approved by the Secretary, except that any deferment of service as a commissioned officer pursuant to paragraph (1)(E) must

Service
commitment.
deferment.

be approved by the Secretary of the military department (including the Secretary of the department in which the United States Coast Guard is operating with respect to the United States Coast Guard and the Secretary of Commerce with respect to the National Oceanic and Atmospheric Administration) which has jurisdiction over such service.

Training vessels. "(f) The Secretary may provide for the training of cadets at the Academy—

"(1) on vessels owned or subsidized by the United States;

"(2) on other vessels documented under the laws of the United States if the owner of any such vessel cooperates in such use; and

"(3) in shipyards or plants and with any industrial or educational organizations.

"(g) The Superintendent of the Academy may confer the degree of bachelor of science upon any individual who has met the conditions prescribed by the Secretary and who, if a citizen of the United States, has passed the examination for a merchant marine officer's license. No individual may be denied a degree under this subsection because the individual is not permitted to take such examination solely because of physical disqualification.

Board of
Visitors,
establishment.

"(h)(1) A Board of Visitors to the Academy shall be established to visit the Academy annually on a date determined by the Secretary and to make recommendations on the operation of the Academy.

Membership.

"(2) The Board shall be composed of—

"(A) 2 Senators appointed by the chairman of the Commerce, Science, and Transportation Committee of the Senate;

"(B) 3 Members of the House of Representatives appointed by the chairman of the Merchant Marine and Fisheries Committee of the House of Representatives;

"(C) 1 Senator appointed by the Vice President;

"(D) 1 Member of the House of Representatives appointed by the Speaker of the House of Representatives; and

"(E) the chairman of the Commerce, Science, and Transportation Committee of the Senate and the chairman of the Merchant Marine and Fisheries Committee of the House of Representatives, as ex officio members.

"(3) Whenever a member of the Board is unable to attend the annual meeting provided in paragraph (1), another individual may be appointed in the manner provided by paragraph (2) as a substitute for such member.

Staff.

"(4) The chairmen of the Commerce, Science, and Transportation Committee of the Senate and the Merchant Marine and Fisheries Committee of the House of Representatives may designate staff members of such committees to serve without reimbursement as staff for the Board.

Travel expenses.

"(5) While away from their homes or regular places of business in the performance of services for the Board, members of the Board and any staff members designated under paragraph (4) shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

Advisory Board,
establishment.

"(i)(1) An Advisory Board to the Academy shall be established to visit the Academy at least once during each academic year, for the purpose of examining the course of instruction and management of the Academy and advising the Assistant Secretary of Commerce for Maritime Affairs and the Superintendent of the Academy.

"(2) The Advisory Board shall be composed of not more than 7 persons of distinction in education and other fields relating to the Academy who shall be appointed by the Secretary for terms not to exceed 3 years and may be reappointed. Membership.

"(3) The Secretary shall appoint a chairman from among the members of the Advisory Board.

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

"(5) The Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.) shall not apply to the Advisory Board established pursuant to this subsection.

"Sec. 1304. (a) The Secretary shall cooperate with and assist any State maritime academy in providing instruction to individuals to prepare them for service in the merchant marine of the United States. 46 USC 1295c.

"(b) The Governors of all States or territories of the United States, or both, cooperating to sponsor a regional maritime academy shall designate in writing one State or territory of the United States, from among the sponsoring States or territories, or both, to conduct the affairs of such regional maritime academy. Any regional maritime academy shall be eligible for assistance from the Federal Government on the same basis as any State maritime academy sponsored by a single State or territory of the United States. Regional maritime academy, designation.

"(c)(1)(A) The Secretary may furnish for training purposes any suitable vessel under the control of the Secretary or provided under subparagraph (B), or construct and furnish a suitable vessel if such a vessel is not available, to any State maritime academy meeting the requirements of subsection (f)(1). Any such vessel— Federal assistance.

"(i) shall be repaired, reconditioned, and equipped (including supplying all apparel, charts, books, and instruments of navigation) as necessary for use as a training ship; Training vessels.

"(ii) shall be furnished to such State maritime academy only after application for such vessel is made in writing by the Governor of the State or territory sponsoring such State maritime academy or, with respect to a regional maritime academy the Governor of the State or territory designated pursuant to subsection (b);

"(iii) shall be furnished to such State maritime academy only if a suitable port for the safe mooring of such vessel is available while it is being used by such academy;

"(iv) shall be maintained in good repair by the Secretary; and

"(v) shall remain the property of the United States.

"(B) Any department or agency of the United States may provide to the Secretary to be furnished to any State maritime academy any vessel (including equipment) which is suitable for the purposes of this paragraph and which can be provided without detriment to the service to which such vessel is assigned.

"(2) The Secretary may pay to any State maritime academy the amount of the costs of all fuel consumed by any vessel furnished under paragraph (1) while such vessel is being used for training purposes by such academy. Fuel costs, payment.

"(3)(A) The Secretary may provide for the training of individuals attending a State maritime academy—

"(i) on vessels owned or subsidized by the United States;

- “(ii) on other vessels documented under the laws of the United States if the owner of any such vessel cooperates in such use; and
“(iii) in shipyards or plants and with any industrial or educational organizations.
- Traveling expenses. “(B) While traveling under orders for purposes of receiving training under this paragraph, any individual who is attending a State maritime academy shall receive from the Secretary allowances for transportation (including reimbursement of traveling expenses) in accordance with any regulations promulgated by the Secretary.
- Academy maintenance and support, annual payments. “(d)(1) The Secretary may enter into an agreement, which shall be effective for not more than 4 years, with one State maritime academy (not including regional maritime academies) located in each State or territory of the United States which meets the requirements of subsection (f)(1), and with each regional maritime academy which meets the requirements of subsection (f)(1), to make annual payments to each such academy for the maintenance and support of such academy. The amount of each such annual payment shall be not less than the amount furnished to such academy for its maintenance and support by the State or territory in which such academy is located or, in the case of a regional maritime academy an amount equal to the amount furnished to such academy for its maintenance and support by all States or territories, or both, cooperating to support such academy, but shall not exceed \$25,000, or \$100,000 if such academy meets the requirements of subsection (f)(2).
- Courses. “(2) The Secretary shall provide to each State maritime academy guidance and assistance in developing courses on the operation and maintenance of new vessels, on equipment, and on innovations being introduced to the merchant marine of the United States.
- Personnel detail. “(e) Upon the request of the Governor of any State or territory, the President may detail, without reimbursement, any of the personnel of the United States Navy, the United States Coast Guard, or the United States Maritime Service to any State maritime academy to serve as superintendents, professors, lecturers, or instructors at such academy.
- Study courses. “(f)(1) As a condition to receiving any payment or the use of any vessel under this section, any State maritime academy shall—
“(A) provide courses of instruction on navigation, marine engineering (including steam and diesel propulsion), the operation and maintenance of new vessels and equipment, and innovations being introduced to the merchant marine of the United States; and
“(B) agree in writing to conform to such standards for courses, training facilities, admissions, and instruction as are established by the Secretary after consultation with the superintendents of the State maritime academies.
- Individuals from non-supporting U.S. areas. “(2) As a condition to receiving an annual payment of any amount in excess of \$25,000 under subsection (d), a State maritime academy shall agree to admit to such academy each year a number of individuals who meet the admission requirements of such academy and who are citizens of the United States residing in States and territories of the United States other than the States or territories, or both, supporting such academy. The Secretary shall determine the number of individuals under this paragraph for each State maritime academy so that such number does not exceed one-third of the total number of individuals attending such academy at any time.
- Student incentive payments. “(g)(1) The Secretary may enter into an agreement, which shall be effective for not more than 4 academic years, with any individual, who is a citizen of the United States and is attending a State

maritime academy which entered into an agreement with the Secretary under subsection (d)(1), to make student incentive payments to such individual, which payments shall be in amounts equaling \$1,200 for each academic year and which payments shall be—

“(A) allocated among the various State maritime academies in a fair and equitable manner;

“(B) used to assist the individual in paying the cost of uniforms, books, and subsistence; and

“(C) paid by the Secretary to the individual in such payments as the Secretary shall prescribe while such individual is attending such academy.

“(2) Each agreement entered into under paragraph (1) shall require the individual to apply for midshipman status in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve) before receiving any student incentive payments under this subsection.

Midshipman status requirement.

“(3) Each agreement entered into under paragraph (1) shall obligate the individual receiving student incentive payments under the agreement—

Incentive payments, obligations.

“(A) to complete the course of instruction at the State maritime academy which the individual is attending, unless the individual is separated by such academy;

“(B) to take the examination for a license as an officer in the merchant marine of the United States on or before the date of graduation from such State maritime academy of such individual and to fulfill the requirements for such license not later than 3 months after such graduation date;

“(C) to maintain a license as an officer in the merchant marine of the United States for at least 6 years following the date of graduation from such State maritime academy of such individual;

“(D) to apply for an appointment as, to accept if tendered an appointment as, and to serve as a commissioned officer in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve), the United States Coast Guard Reserve, or any other reserve unit of an armed force of the United States, for at least 6 years following the date of graduation from such State maritime academy of such individual;

Six-year duty commitment.

“(E) to serve the foreign and domestic commerce and the national defense of the United States for at least 3 years following the date of graduation from the Academy—

Foreign and domestic commerce service.

“(i) as a merchant marine officer serving on vessels documented under the laws of the United States or on vessels owned and operated by the United States or by any State or territory of the United States;

“(ii) as an employee in a United States maritime-related industry, profession, or marine science (as determined by the Secretary), if the Secretary determines that service under clause (i) is not available to such individual;

“(iii) as a commissioned officer on active duty in an armed force of the United States or in the National Oceanic and Atmospheric Administration; or

“(iv) by combining the services specified in clauses (i), (ii), and (iii); and

“(F) to report to the Secretary on the compliance by the individual to this paragraph.

Report.

“(4) If the Secretary determines that any individual who has attended a State maritime academy for not less than 2 years has

Duty failure.

- failed to fulfill the part of the agreement (required by paragraph (1)) described in paragraph (3)(A), such individual may be ordered by the Secretary of the Navy to active duty in the United States Navy to serve for a period of time not to exceed 2 years. In cases of hardship as determined by the Secretary, the Secretary may waive this paragraph.
- Waiver.
- Duty failure. "5) If the Secretary determines that any individual has failed to fulfill any part of the agreement (required by paragraph (1)) described in subparagraphs (B), (C), (D), (E), or (F) of paragraph (3), such individual may be ordered to active duty to serve a period of time not less than 2 years and not more than the unexpired portion (as determined by the Secretary) of the service required by subparagraph (E) of such paragraph. The Secretary, in consultation with the Secretary of Defense and the Secretary of Transportation, shall determine in which service the individual shall be ordered to active duty to serve such period of time. In cases of hardship as determined by the Secretary, the Secretary may waive this paragraph.
- Waiver.
- Service deferment, condition. "6) The Secretary may defer the service commitment of any individual pursuant to subparagraph (E) of paragraph (3) (as specified in the agreement required by such paragraph) for a period of not more than 2 years if such individual is engaged in a graduate course of study approved by the Secretary, except that any deferment of service as a commissioned officer pursuant to subparagraph (E) of such paragraph must be approved by the Secretary of the military department (including the Secretary of the department in which the United States Coast Guard is operating with respect to the United States Coast Guard and the Secretary of Commerce with respect to the National Oceanic and Atmospheric Administration) which has jurisdiction over such service.
- Anze, p. 1997. "7) This subsection shall apply only to individuals first entering a State maritime academy after the date occurring 6 months after the effective date of the Maritime Education and Training Act of 1980.
- Additional training. 46 USC 1295d. "(h) Any citizen of the United States attending a State maritime academy may be appointed by the Secretary of the Navy as a midshipman in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve).
- Equipment or supplies, purchase. "Sec. 1305. (a) The Secretary may provide additional training on maritime subjects, as the Secretary deems necessary, to supplement other training opportunities and may make any such training available to the personnel of the merchant marine of the United States and to individuals preparing for a career in the merchant marine of the United States.
- "(b) The Secretary may prepare or purchase any equipment or supplies required for any training provided under subsection (a) and may contract with any person, partnership, firm, association, or corporation (without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5)) for the performance of any services deemed necessary by the Secretary in the preparation of any such equipment or supplies and in the supervision and administration of any such training.
- United States Maritime Service, establishment. 46 USC 1295e. Enrollment determination. "Sec. 1306. (a) The Secretary may establish and maintain a voluntary organization for the training of citizens of the United States to serve on merchant marine vessels of the United States to be known as the United States Maritime Service.
- 5 USC 5101 et seq., 5331. "(b) The Secretary may determine the number of individuals to be enrolled for training and reserve purposes in such service, to fix the rates of pay and allowances of such individuals without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5,

United States Code (relating to classification and General Schedule pay rates), to prescribe the course of study and the periods of training in such service, and to prescribe the uniform of such service and the rules governing the wearing and furnishing of such uniform.

"(c) The ranks, grades, and ratings for personnel of the United States Maritime Service shall be the same as are then prescribed for the personnel of the United States Coast Guard.

"Sec. 1307. (a) As used in this section, the term 'civilian nautical school' means any school operated and conducted in the United States (except the Academy maintained under section 1303, any State maritime academy assisted under section 1304, and any other school operated by the United States or any agency of the United States) which offers instruction to individuals quartered on board any vessel for the primary purpose of training them for service in the merchant marine.

"Civilian
nautical school."
46 USC 1295f.

"(b) Each civilian nautical school shall be subject to examination and inspection by the Secretary, and the Secretary may (under such rules and regulations as the Secretary may prescribe) provide for the rating and certification of such schools as to the adequacy of the course of instruction, the competency of the instructors, and the suitability of the equipment used by, or in connection with, such school.

Examination
and inspection.

"(c)(1) Any vessel or other floating equipment, other than a vessel of the United States Navy or the United States Coast Guard, used by or in connection with any civilian nautical school (whether such vessel or other floating equipment is being navigated or not) shall be subject to the vessel inspection laws of the United States under the same terms as is a passenger carrying vessel or a vessel carrying passengers for hire.

"(2) The Secretary of the department in which the United States Coast Guard is operating shall issue regulations to carry out the inspection of such vessels and floating equipment.

Regulations.

"(d) Whoever—

Violation,
penalty.

"(1) violates this section or any regulations promulgated to implement this section;

"(2) is an owner of a vessel or floating equipment which is in violation of the requirements of this section;

"(3) is an officer or member of the Board of Directors of a school, organization, association, partnership, or corporation which owns a vessel or floating equipment which is used in violation of the requirements of this section or which uses such a vessel or floating equipment in violation of this section,

shall be fined not more than \$10,000 or imprisoned for not more than one year, or both, for each offense.

"Sec. 1308. (a) The Secretary shall establish such rules and regulations as may be necessary to carry out this title.

Rules and
regulations,
establishment.
46 USC 1295g.
Excess vessels
and equipment.

"(b) The Secretary may cooperate with and assist the Academy, any State maritime academy, and any nonprofit training institution which has been jointly approved by the Secretary and the Secretary of the department in which the United States Coast Guard is operating as offering training courses which meet Federal regulations for maritime training, by making vessels, shipboard equipment, and other marine equipment, owned by the United States which have been determined to be excess or surplus, available by gift, loan, sale, lease, or charter to such institution for instructional purposes on such terms as the Secretary deems appropriate.

Personnel detail. "c)(1) The Secretary may secure directly from any department or agency of the United States any information, facilities, or equipment, on a reimbursable basis, necessary to carry out this title.

"(2) Upon the request of the Secretary, the head of any department or agency of the United States (including any military department of the United States) may detail, on a reimbursable basis, any of the personnel of such department or agency to the Secretary to assist in carrying out this title.

Personnel, employment. 5 USC 101. "(d) To carry out this title, the Secretary may employ at the Academy any individual as a professor, lecturer, or instructor, without regard to the provisions of title 5, United States Code (governing appointments in the competitive service), and may pay such individual without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title (relating to classification and General Schedule pay rates).

5 USC 5101 et seq., 5331. Certain vessels, inspection regulations. "(e)(1) The Secretary of the department in which the United States Coast Guard is operating shall inspect, and prescribe regulations for the inspection of, any vessel of more than 15 gross tons, other than a vessel of the United States Navy or the United States Coast Guard, which is used primarily for training or instruction provided by the Academy under section 1303 or by a State maritime academy assisted under section 1304. Any such vessel shall not be subject to inspection under any other law or regulation requiring the inspection of such vessel by the United States Coast Guard.

"(2) Any inspection under paragraph (1) shall include inspections of lifesaving and firefighting equipment, structure and arrangement generally, safe loading, and living and working conditions.

"(3) Any regulations prescribed under paragraph (1) shall take into account the function, purpose, and use of such vessels, the routes of such vessels, and the number of individuals who may be carried on such vessels.

"(4) Any vessel which is described in paragraph (1) may not be used in connection with any training or instruction provided by the Academy under section 1303 or by a State maritime academy assisted under section 1304 as long as such vessel is in violation of any regulations prescribed pursuant to this subsection or does not pass any inspection conducted pursuant to this subsection.

Inspection requirements, violation. Penalty. "(5) Whoever—

"(A) refuses to allow, or impedes or interferes with, any inspection required by this subsection; or

"(B) violates any regulations prescribed under this subsection, shall be fined not more than \$10,000 or imprisoned for not more than one year, or both, for each offense."

Sec. 3. (a) Section 209(b) of the Merchant Marine Act, 1936 (46 U.S.C. 1119(b)) is amended—

(1) by striking out "State Marine Schools" in clause (7) and inserting in lieu thereof "State maritime academies under section 1304 of this Act";

(2) by striking out "extension and correspondence courses authorized under section 216(c) of this Act; and" in clause (9) and inserting in lieu thereof "additional training provided under section 1305 of this Act";

(3) by redesignating clause (10) as clause (11); and

(4) by inserting after clause (9) the following new clause:

"(10) expenses necessary to carry out title XIII of this Act; and"

(b) Section 905 of the Merchant Marine Act, 1936 (46 U.S.C. 1244), is amended by adding after subsection (e) the following new subsections:

Ante, p. 2006.

Ante, p. 1997.

- (f) The terms 'Representative' and 'Member of the Congress' include Delegates to the House of Representatives from the District of Columbia, Guam, and the Virgin Islands, and the Resident Commissioner to the House of Representatives from the Commonwealth of Puerto Rico. "Representative" and "Member of the Congress."
- (g) The term 'United States' includes the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, and the areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977, the agreements relating to and implementing that Treaty, signed September 7, 1977, and the Agreement Between the United States of America and the Republic of Panama Concerning Air Traffic Control and Related Services, concluded January 8, 1979." "United States."
- (c) The Act entitled "An Act to encourage the establishment of Public Marine Schools", approved June 20, 1874 (18 Stat. 121), is repealed. Repeal.
- (d) Section 216 of the Merchant Marine Act, 1936 (46 U.S.C. 1126) is repealed. Repeal.
- (e) The Act entitled "An Act to provide for the examination of civilian nautical schools and for the inspection of vessels used in connection therewith, and for other purposes", approved June 12, 1940 (46 U.S.C. 1331-1334, commonly known as the Civilian Nautical School Act), is repealed. Repeal.
- (f) The joint resolution entitled "Joint resolution to establish a Board of Visitors for the United States Merchant Marine Academy", approved May 11, 1944 (46 U.S.C. 1126c), is repealed. Repeal.
- (g) The Act entitled "An Act to authorize the course of instruction at the United States Merchant Marine Academy to be given to not exceeding twelve persons at a time from the American republics, other than the United States", approved August 9, 1946 (46 U.S.C. 1126b), is repealed. Repeal.
- (h) The Act entitled "An Act to create an Academic Advisory Board for the United States Merchant Marine Academy", approved July 22, 1947 (46 U.S.C. 1126d), is repealed. Repeal.
- (i) Section 34 of the Act entitled "An Act to revise, codify, and enact into law, title 10 of the United States Code entitled 'Armed Forces', and title 32 of the United States Code, entitled 'National Guard' ", approved August 10, 1956 (46 U.S.C. 1126a-1), is repealed. Repeal.
- (j) The Maritime Academy Act of 1958 (46 U.S.C. 1381-1388) is repealed, except as provided in section 1304(g)(5) of title XIII of the Merchant Marine Act, 1936 (as added by section 2 of this Act). Repeal. Ante. p. 2003.

Repeal.

(k) The Act entitled "An Act to authorize the Secretary of Interior to nominate citizens of the Trust Territory of the Pacific Islands to be cadets at the United States Merchant Marine Academy", approved September 14, 1961 (46 U.S.C. 1126b-1), is repealed.

Sec. 4. This Act shall take effect on October 1, 1981.

Effective date.
46 USC 1295
note.

Approved October 15, 1980.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 96-1139 (Comm. on Merchant Marine and Fisheries).

CONGRESSIONAL RECORD, Vol. 126 (1980):

June 30, considered and passed House.

Sept. 30, considered and passed Senate.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 16, No. 42:

Oct. 15, Presidential statement.

Maritime Act of 1981*

* Pub. L. 97-31, 95 Stat. 158; 46 U.S.C. §1601 (1981).

Public Law 97-31
97th Congress

An Act

To revise the laws pertaining to the Maritime Administration.

Aug. 6, 1981
[H.R. 4074]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Maritime Act of 1981".

SEC. 2. The Maritime Administration of the Department of Commerce is transferred to the Department of Transportation.

SEC. 3. There are transferred to the Department of Transportation and vested in the Secretary of Transportation all functions, powers, and duties relating to the Maritime Administration of the Secretary of Commerce and of officers and offices of the Department of Commerce.

SEC. 4. There shall be at the head of the Maritime Administration an Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level III of the Executive Schedule. The Maritime Administrator shall report directly to the Secretary of Transportation and shall perform such duties as the Secretary of Transportation shall prescribe.

SEC. 5. In carrying out any function transferred by this Act, the Secretary of Transportation may exercise any authority available by law to the Secretary of Commerce with respect to such function and the actions of the Secretary of Transportation in exercising such authority shall have the same force and effect as if exercised by the Secretary of Commerce on the day preceding the effective date of this Act.

SEC. 6. The personnel employed in connection with, and the assets, liabilities, contracts, property, facilities, records, and unexpended balance of appropriations, and other funds employed, held, used, arising from, available to, or to be made available in connection with the functions and offices, or portions thereof, transferred by this Act, including all Senior Executive Service positions, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Secretary of Transportation for appropriate allocation. Personnel employed in connection with functions transferred by this Act shall be transferred in accordance with any applicable laws and regulations relating to transfer of functions. Unexpended funds transferred pursuant to this section shall be used only for the purposes for which the funds were originally authorized and appropriated, except that such funds may be used for the expenses associated with the transfer pursuant to this Act.

SEC. 7. In order to facilitate the transfer effected by this Act, the Director of the Office of Management and Budget is authorized and directed to make such determinations as may be necessary with regard to functions, offices, or portions thereof transferred by this Act, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, apportionments,

Maritime Act of
1981.
46 USC 1601
note.
Maritime
Administration,
transfer to
Transportation
Department.
46 USC 1601.
46 USC 1602.
Administrator.
46 USC 1603.

5 USC 5314.

46 USC 1604.

Personnel,
assets, liabilities,
and records.
46 USC 1605

31 USC 581c.

46 USC 1606.

allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, offices, or portions thereof, as may be necessary to resolve disputes between the Secretaries of Commerce and Transportation which may arise in connection with the transfer. This section does not vest in the Director of the Office of Management and Budget any of the functions, powers, or duties of the Maritime Administration, the Secretary of Commerce, or the Secretary of Transportation. The authority and direction given by this section to the Director of the Office of Management and Budget shall terminate sixty days after enactment.

46 USC 1607.

SEC. 8. With the consent of the Secretary of Commerce, the Secretary of Transportation may use the services of such officers, employees, and other personnel of the Department of Commerce as needed to implement this Act.

46 USC 1608.

SEC. 9. (a) All orders, determinations, rules, regulations, permits, grants, contracts, agreements, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this Act to the Secretary of Transportation or the Department of Transportation, and

(2) which are in effect at the time this Act takes effect shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary of Transportation, or other authorized official, a court of competent jurisdiction, or by operation of law.

(b)(1) This Act does not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance, pending on the effective date of this Act, but such proceedings and applications, to the extent that they relate to functions so transferred and except as provided in paragraph (2), shall be continued at the Department of Transportation. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by the Secretary of Transportation, by a court of competent jurisdiction, or by operation of law. This subsection does not prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that the proceeding could have been discontinued or modified if this Act had not been enacted.

Maritime
Subsidy Board,
pending actions.

(2) Actions of the Maritime Subsidy Board pending on review before the Secretary of Commerce on the day preceding the effective date of this Act shall remain with the Secretary of Commerce, unless otherwise agreed between the Secretary of Commerce and the Secretary of Transportation, for final administrative disposition as though this Act had not been enacted.

(3) The Secretary of Transportation may promulgate regulations providing for the orderly transfer of proceedings continued under paragraph (1).

(c) Except as provided in subsection (e)—

(1) the provisions of this Act shall not affect actions commenced prior to the effective date of this Act, and

(2) in all such actions, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.

(d) No action or other proceeding commenced by or against any officer of the Maritime Administration in his official capacity shall abate by reason of the enactment of this Act. No cause of action by or against the Maritime Administration or by or against any officer of the Maritime Administration in his official capacity shall abate by reason of the enactment of this Act.

(e) If, before the date on which this Act takes effect, the Secretary of Commerce is a party to an action, and under this Act any function of the Secretary of Commerce which is the subject of the action is transferred to the Secretary of Transportation, then such action shall be continued with the Secretary of Transportation substituted as a party.

(f) Orders and actions of the Secretary of Transportation in the exercise of functions transferred under this Act shall be subject to judicial review as if such orders and actions had been by the Secretary of Commerce exercising such functions immediately preceding their transfer. Any statutory requirements relating to notice, hearings, action upon the record, or administrative review that apply to any function transferred by this Act shall apply to the exercise of such function by the Secretary of Transportation.

Judicial review
and statutory
requirements.

SEC. 10. With respect to any function or office transferred by this Act and exercised on or after the effective date of this Act, reference in any other Federal law to the Maritime Administration or any of its predecessor agencies or any officer or office the functions of which are so transferred shall be deemed to refer to the Secretary of Transportation, other official, or component of the Department of Transportation to which this Act transfers such functions.

46 USC 1609

SEC. 11. If any provisions of this Act or the application thereof to any person or circumstance is held invalid, neither the remainder of this Act nor the application of such provision to other persons or circumstances shall be affected thereby.

46 USC 1610

SEC. 12. CONFORMING AMENDMENTS.—(1) Title 5, United States Code, is amended as follows:

(A) Section 5314 is amended by inserting "Administrator, Maritime Administration", at the end thereof.

(B) Section 5315 is amended by striking "(8)" following the words "Assistant Secretaries of Commerce", and substituting "(7)".

(C) Section 5316 is amended by striking "Maritime Administration, Department of Commerce".

(2) Section 203 of the Act of August 14, 1946 (7 U.S.C. 1622), is amended by inserting ", or the Secretary of Transportation," after "regulatory body" in subsection (j).

(3) Title 10, United States Code, is amended as follows:

(A) Section 2664(a) is amended by—

(i) striking "Secretary of Commerce, and the Chairman of the Federal Maritime Board" in the introductory paragraph and substituting "Secretary of Transportation"; and

(ii) striking "Secretary of Commerce or the Federal Maritime Board by 1950 Reorganization Plan Numbered 21, effective May 24, 1950 (64 Stat. 1273)" in paragraph (3) and substituting "Secretary of Transportation".

(B) Section 2665 is amended by—

(i) striking "or the Federal Maritime Board" in subsections (a) and (b); and

(ii) striking "Federal Maritime Board" at the end of subsection (b) and substituting "Department of Transportation".

(C) Section 4745(a) is amended by striking "Secretary of Commerce" and substituting "Secretary of Transportation".

(D) Section 7361(b) is amended by—

- (i) striking "Secretary of Commerce" and substituting "Secretary of Transportation"; and
- (ii) striking "Department of Commerce" and substituting "Department of Transportation".

(4) Section 148 of title 14, United States Code, is amended by striking "United States Maritime Commission", and substituting "Maritime Administrator".

(5) Section 42(a) of Public Law 91-469 (15 U.S.C. 1507a) is repealed.

(6) The Act of February 14, 1903 (15 U.S.C. 1511), is amended by striking "(c) Maritime Administration," and redesignating the paragraphs accordingly.

(7) Sections 3 and 8 of the Act of February 14, 1903 (15 U.S.C. 1512 and 1519), are amended by striking "shipping," and ", and the transportation facilities".

(8) Section 2 of Public Law 96-371 (15 U.S.C. 1519a) is amended by striking "Secretary of Commerce" and substituting "Secretary of Transportation".

(9) Section 500 of the Act of February 28, 1920 (15 U.S.C. 1528), is amended by striking "Secretary of Commerce" wherever it appears and substituting "Secretary of Transportation".

(10) Section 3 of the Act of July 19, 1940 (16 U.S.C. 18b), is amended by striking "United States Maritime Commission" and substituting "Department of Transportation".

(11) Section 1 of the Act of March 4, 1915 (31 U.S.C. 686), is amended by striking "Federal Maritime Commission" in subsection (a) and substituting "Maritime Administration".

(12) Section 2 of the Act of April 29, 1941 (40 U.S.C. 270f), is amended by striking "Secretary of Commerce" and substituting "Secretary of Transportation".

(13) Section 602 (c) and (d) of the Act of June 30, 1949 (40 U.S.C. 474), is amended in paragraph (16) by—

- (A) striking "United States Maritime Commission" wherever it appears and substituting "Maritime Administration"; and
- (B) striking "Commission" and substituting "Administration".

(14) Section 516 of Public Law 90-580 (40 U.S.C. 483a) is amended by inserting "the Department of Transportation," immediately after "the Department of Commerce,".

(15) Section 203 of the Act of June 30, 1949 (40 U.S.C. 484), is amended in subsection (i) by—

- (A) striking "United States Maritime Commission" and substituting "Maritime Administration"; and
- (B) striking "Commission" and substituting "Administration".

(16) Section 2 of the Act of June 22, 1942 (41 U.S.C. 50), is amended by striking "United States Maritime Commission" and substituting "Secretary of Transportation".

(17) Section 5 of the Act of July 1, 1944 (41 U.S.C. 105), is amended by striking "Chairman of the Maritime Commission" and substituting "Secretary of Transportation".

(18) Section 12 of the Act of July 1, 1944 (41 U.S.C. 112), is amended by striking "Maritime Commission" in subsection (h) and substituting "the Department of Transportation".

(19) Section 102 of the Act of August 9, 1955 (42 U.S.C. 1973cc-1), is amended by striking "Secretary of Commerce" in clause (10) and substituting "Secretary of Transportation".

(20) Section 1 of the Home Port Act (46 U.S.C. 18) is amended by striking "Director of the Bureau of Marine Inspection and Navigation of the Department of Commerce" and substituting "Secretary of Transportation or the Secretary of the Treasury".

(21) The Act of July 24, 1956, is amended by—

(A) striking "Secretary of Commerce" wherever it appears in sections 1, 2, and 3 (46 U.S.C. 249, 249a, and 249b) and substituting "Secretary of Transportation"; and

(B) striking "with the concurrence of the Secretary of the Treasury" in sections 1 and 3 (46 U.S.C. 249 and 249b).

(22) The Act of June 30, 1961 (46 U.S.C. 289b), is amended by striking "Secretary of Commerce" and substituting "Secretary of Transportation".

(23) The Act of October 25, 1919 (46 U.S.C. 363), is amended by striking "United States Shipping Board" and substituting "Department of Commerce and the Maritime Administration".

(24) Section 6 of the Act of May 27, 1936 (46 U.S.C. 382b), is amended by striking "Secretary of Commerce" wherever it appears and substituting "Secretary of the Department in which the Coast Guard is operating or the Secretary of the Treasury".

(25) The Suits in Admiralty Act is amended by—

(A) striking the last sentence of section 3 (46 U.S.C. 743);

(B) striking "United States Shipping Board" in section 7 (46 U.S.C. 747) and substituting "Maritime Administration";

(C) striking "or the United States Shipping Board" in section 9 (46 U.S.C. 749);

(D) striking "or of the United States Shipping Board" in sections 10 and 11 (46 U.S.C. 750 and 751); and

(E) striking "and the United States Shipping Board" in section 12 (46 U.S.C. 752).

(26) Section 9 of the Shipping Act, 1916 (46 U.S.C. 808) is amended by striking "United States Maritime Commission", "Commission", and "Secretary of Commerce" wherever they appear and substituting "Secretary of Transportation".

(27) Section 12 of the Shipping Act, 1916 (46 U.S.C. 811) is amended by—

(A) striking "Commission" wherever it appears and substituting "Secretary of Transportation";

(B) striking "It" wherever it appears and substituting "The Secretary";

(C) striking "it" wherever it appears and substituting "the Secretary"; and

(D) striking "its" wherever it appears and substituting "his".

(28) Section 14a of the Shipping Act, 1916 (46 U.S.C. 813) is amended by—

(A) striking "Commission" wherever it appears and substituting "Federal Maritime Commission"; and

(B) striking "Secretary of Commerce" and substituting "Secretary of Transportation or the Secretary of the Treasury".

(29) Section 21 of the Shipping Act, 1916 (46 U.S.C. 820) is amended in subsection (a) by—

(A) striking "Commission" in the first sentence and substituting "Federal Maritime Commission and Secretary of Transportation";

(B) striking "it" in the first sentence and substituting "it or him"; and

(C) striking "Commission" wherever it appears in the second sentence and substituting "Commission or Secretary".

(30) Section 37 of the Shipping Act, 1916 (46 U.S.C. 835) is amended by striking "Commission" and "Secretary of Commerce" wherever they appear and substituting "Secretary of Transportation".

(31) Sections 40 and 42 of the Shipping Act, 1916 (46 U.S.C. 838 and 840) are amended by striking "Commission" wherever it appears and substituting "Secretary of Transportation".

(32) Section 41 of the Shipping Act, 1916 (46 U.S.C. 839) is amended by—

(A) striking "Commission" wherever it appears and substituting "Secretary of Transportation"; and

(B) striking "its" and substituting "his".

(33) Section 1 of the Merchant Marine Act, 1920 (46 U.S.C. 861) is amended by striking "United States Maritime Commission" and substituting "Secretary of Transportation".

(34) Section 5 of the Merchant Marine Act, 1920 (46 U.S.C. 864) is amended by striking "Commission" wherever it appears and substituting "Secretary of Transportation".

(35) Section 101 of the Act of June 30, 1948 (46 U.S.C. 864a) is amended by striking "Commission" and substituting "Secretary of Transportation".

(36) Section 1 of the Act of June 29, 1949 (46 U.S.C. 864b) is amended by—

(A) striking "Maritime Commission" and substituting "Maritime Administration of the Department of Transportation"; and

(B) striking "Commission" and substituting "Maritime Administration".

(37) Section 6 of the Merchant Marine Act, 1920 (46 U.S.C. 865) is amended by—

(A) striking "Commission" wherever it appears and substituting "Secretary of Transportation";

(B) striking "it" wherever it appears and substituting "he";

(C) striking ", upon an affirmative vote of not less than five of its members, spread upon the minutes of the board,"; and

(D) striking "its" wherever it appears and substituting "his".

(38) Section 1 of the Act of May 16, 1972 (46 U.S.C. 865a), is amended by striking "Secretary of Commerce" and substituting "Secretary of Transportation".

(39) Section 7 of the Merchant Marine Act, 1920 (46 U.S.C. 866) is amended by—

(A) other than in the second proviso, striking "Commission" wherever it appears and substituting "Secretary of Transportation"; and

(B) striking "its" and substituting "his".

(40) Section 8 of the Merchant Marine Act, 1920 (46 U.S.C. 867) is amended by—

(A) striking "Commission" wherever it appears and substituting "Secretary of Transportation";

(B) striking "it" and substituting "he"; and

(C) striking "its" and substituting "his".

(41) Section 9 of the Merchant Marine Act, 1920 (46 U.S.C. 868) is amended by—

(A) striking "Commission" wherever it appears and substituting "Secretary of Transportation"; and

(B) striking "it" in the last sentence and substituting "he".

(42) Section 10 of the Merchant Marine Act, 1920 (46 U.S.C. 869) is amended by—

(A) striking "Commission" wherever it appears and substituting "Secretary of Transportation"; and

- (B) striking "it" wherever it appears and substituting "he".
- (43) Section 12 of the Merchant Marine Act, 1920 (46 U.S.C. 871) is amended by—
- (A) striking "Commission" wherever it appears and substituting "Secretary of Transportation";
- (B) striking "it" the first two times it appears and substituting "him"; and
- (C) striking "its" and substituting "his".
- (44) Section 13 of the Merchant Marine Act, 1920 (46 U.S.C. 872) is amended by—
- (A) striking "Commission" wherever it appears and substituting "Secretary of Transportation"; and
- (B) striking "it" and substituting "him".
- (45) Section 17 of the Merchant Marine Act, 1920 (46 U.S.C. 875) is amended by—
- (A) striking the first paragraph; and
- (B) striking "Commission" wherever it appears and substituting "Secretary of Transportation".
- (46) Section 19 of the Merchant Marine Act, 1920, as amended, is amended by— 46 USC 876.
- (A) striking "The Commission" the first time it appears and substituting "The Secretary of Transportation"; and
- (B) inserting after subsection (a) the following undesignated paragraph:
- "And the Federal Maritime Commission is authorized and directed in aid of the accomplishment of the purposes of this Act:".
- (47) Section 21 of the Merchant Marine Act, 1920 (46 U.S.C. 877) is amended by striking "Commission" and substituting "Secretary of Transportation".
- (48) Section 25 of the Merchant Marine Act, 1920 (46 U.S.C. 881) is amended by striking "Secretary of Commerce and the chairman of the Commission shall each appoint one representative" and substituting "Secretary of Transportation shall appoint one representative and the Secretary of the Department in which the Coast Guard is operating shall appoint one representative (except in a case where such Secretary is the Secretary of Transportation in which case he shall appoint both representatives)".
- (49) Section 27 of the Merchant Marine Act, 1920 (46 U.S.C. 883) is amended by striking "Secretary of Commerce" in the fourth proviso and substituting "Secretary of Transportation".
- (50) Section 28 of the Merchant Marine Act, 1920 (46 U.S.C. 884) is amended by—
- (A) striking "Commission" wherever it appears and substituting "Secretary of Transportation"; and
- (B) striking "it" in the second sentence and substituting "he".
- (51) Section 202 of the Merchant Marine Act, 1928 (46 U.S.C. 891b) is amended by—
- (A) striking "Commission" and substituting "Secretary of Transportation"; and
- (B) striking "its" wherever it appears and substituting "his".
- (52) Section 203 of the Merchant Marine Act, 1928 (46 U.S.C. 891c) is amended by striking "Commission" wherever it appears and substituting "Secretary of Transportation".
- (53) Section 705 of the Merchant Marine Act, 1928 (46 U.S.C. 891w) is amended by striking "Maritime Commission" and substituting "Secretary of Transportation".

(54) Subsection B of the Ship Mortgage Act, 1920 (46 U.S.C. 911) is amended by striking "Commission" in paragraph (4) and substituting "Secretary of Transportation".

(55) Subsection O of the Ship Mortgage Act, 1936 (46 U.S.C. 961) is amended by—

(A) inserting a period after the word "Commission" in subsection (a);

(B) inserting "The Secretary" at the beginning of the second sentence of subsection (a);

(C) striking "Board" wherever it appears in subsections (a) and (d) and substituting "Secretary of Transportation"; and

(D) striking "Secretary of Commerce" wherever it appears in subsection (e) and substituting "Secretary of Transportation".

(56) Subsection V of the Ship Mortgage Act, 1920 (46 U.S.C. 982) is amended by striking "Secretary of Commerce is" and substituting "Secretary of Transportation or the Secretary of the Treasury are".

(57) Subsection W of the Ship Mortgage Act, 1920 (46 U.S.C. 983) is amended by striking "Secretary of Commerce" and substituting "Secretary of Transportation or the Secretary of the Treasury".

(58) Section 201 of the Ship Mortgage Act, 1936 (46 U.S.C. 1111) is amended by—

(A) repealing subsection (a);

(B) in subsection (d)—

(i) inserting "and the Secretary of Transportation" after "The Commission";

(ii) striking "its" and substituting "their"; and

(iii) striking "it" and substituting "them";

(C) in subsection (e)—

(i) inserting "and the Secretary of Transportation" after "Commission" when it first appears and at the beginning of the second sentence;

(ii) striking "its" in the second sentence and substituting "their"; and

(iii) striking the proviso; and

(D) inserting "or the Secretary of Transportation" after "Commission" and "it" wherever they appear in subsection (f).

(59) The Act of June 25, 1938 (46 U.S.C. 1111a), is amended by striking "United States Maritime Commission" and substituting "Federal Maritime Commission and the Secretary of Transportation".

(60) Section 202 of the Merchant Marine Act, 1936 (46 U.S.C. 1112) is amended by—

(A) striking the first sentence;

(B) striking "Commission" wherever it appears and substituting "Secretary of Transportation";

(C) striking "it" wherever it appears and substituting "he"; and

(D) striking "its" and substituting "his".

(61) Section 204 of the Merchant Marine Act, 1936 (46 U.S.C. 1114) is amended by—

(A) striking "United States Maritime Commission" wherever it appears and substituting "Federal Maritime Commission and the Secretary of Transportation";

(B) inserting "and the Secretary of Transportation" following "The Commission" in subsection (b);

(C) striking "is" in subsection (b) and substituting "are"; and

(D) striking "it" wherever it appears and substituting "them".

(62) Section 205 of the Merchant Marine Act, 1936 (46 U.S.C. 1115) is amended by striking "Commission" and substituting "Federal Maritime Commission and the Secretary of Transportation".

(63) Section 206 of the Merchant Marine Act, 1936 (46 U.S.C. 1116) is amended by—

(A) striking "Commission" where it appears for the first time in the first and second sentences and substituting "Department of Transportation"; and

(B) striking "Commission" wherever it appears and substituting "Secretary of Transportation".

(64) Section 207 of the Merchant Marine Act, 1936 (46 U.S.C. 1117), is amended by—

(A) striking "Commission" where it appears the first time in the first sentence and substituting "Federal Maritime Commission and the Secretary of Transportation";

(B) inserting "or his" after "its" in the first sentence;

(C) inserting "or Secretary" after "Commission" where it appears for the second time in the first sentence and where it appears in the last sentence; and

(D) inserting "and Secretary's" after "Commission's" in the second sentence.

(65) Section 208 of the Merchant Marine Act, 1936 (46 U.S.C. 1118), is amended by—

(A) striking "Commission" and substituting "Federal Maritime Commission and the Secretary of Transportation"; and

(B) inserting "or his" after "its" wherever it appears.

(66) The proviso clause of section 209(b) of the Merchant Marine Act, 1936 (46 U.S.C. 1119(b)) is amended by striking "Secretary of Commerce" and substituting "Secretary of Transportation".

(67) Sections 210 and 211 of the Merchant Marine Act, 1936 (46 U.S.C. 1120 and 1121) are amended by striking "Secretary of Commerce" where they appear and substituting "Secretary of Transportation".

(68) Section 5 of Public Law 96-387 (46 U.S.C. 1121-1) is amended by striking "Secretary of Commerce" and substituting "Secretary of Transportation".

94 Stat. 1546.

(69) Section 212 of the Merchant Marine Act, 1936 (46 U.S.C. 1122), is amended by—

(A) striking "Commission" in the first line and substituting "Secretary of Transportation";

(B) inserting after subsection (d) the following undesignated paragraph:

"The Federal Maritime Commission is authorized and directed—";

(C) inserting after subsection (e) the following undesignated paragraph:

"The Secretary of Transportation is authorized and directed—"; and

(D) striking "it" in subsection (g) and substituting "he".

(70) Section 212(A) of the Merchant Marine Act, 1936 (46 U.S.C. 1122a) is amended by striking "Secretary of Commerce" wherever it appears and substituting "Secretary of Transportation".

(71) Section 213 of the Merchant Marine Act, 1936 (46 U.S.C. 1123) is amended by striking "Commission" and substituting "Secretary of Transportation".

(72) Section 214 of the Merchant Marine Act, 1936 (46 U.S.C. 1124) is amended by—

(A) striking "Commission" where it appears the first time in subsection (a) and substituting "Federal Maritime Commission or the Secretary of Transportation";

(B) inserting "or the Secretary," after "designated by it" in subsection (a);

(C) inserting "or the Secretary," after "Commission" where it appears in the third sentence of subsection (a) and wherever it appears in subsection (b); and

(D) striking "it" in subsection (b) and substituting "it or he".

(73) Section 215 of the Merchant Marine Act, 1936 (46 U.S.C. 1125) is amended by—

(A) striking "Commission" wherever it appears and substituting "Secretary of Transportation";

(B) striking "it" and substituting "his"; and

(C) striking "its" in the first sentence and substituting "his".

(74) Section 4 of the Act of February 6, 1941 (46 U.S.C. 1125a), is amended by—

(A) striking "Commission" where it appears the first time and substituting "Secretary of Transportation"; and

(B) striking "Commission" where it appears the second and third time and substituting "Secretary".

(75) Section 216 of the Merchant Marine Act, 1936 (46 U.S.C. 1126), is amended by—

(A) striking "Secretary of Commerce" wherever it appears and substituting "Secretary of Transportation";

(B) striking "it" wherever it appears in subsection (c) and substituting "he"; and

(C) striking "itself" in subsection (d) and substituting "himself".

(76) Section 603 of the Department of Defense Appropriation Authorization Act, 1977 (46 U.S.C. 1126-1), is amended by striking "Assistant Secretary of Commerce for Maritime Affairs" and substituting "Maritime Administrator".

(77) Section 34 of the Act of August 10, 1956 (46 U.S.C. 1126a-1), is amended by striking "Secretary of Commerce" and substituting "Secretary of Transportation".

(78) The Act of August 9, 1946 (46 U.S.C. 1126b), is amended by striking "Chairman of the United States Maritime Commission" wherever it appears and substituting "Secretary of Transportation".

46 USC 1126b-1.

(79) The Act of September 14, 1961 (46 U.S.C. 1126a-1), is amended by striking "Secretary of Commerce" wherever it appears and substituting "Secretary of Transportation".

(80) The Act of May 11, 1944 (46 U.S.C. 1126c), is amended by striking "Chairman of the United States Maritime Commission" and substituting "Secretary of Transportation".

(81) The Act of July 22, 1947 (46 U.S.C. 1126d), is amended by striking "Secretary of Commerce" wherever it appears and substituting "Secretary of Transportation".

(82) Section 301 of the Merchant Marine Act, 1936 (46 U.S.C. 1131), is amended by striking "Commission" wherever it appears and substituting "Secretary of Transportation".

(83) Section 302 of the Merchant Marine Act, 1936 (46 U.S.C. 1132), is amended by—

(A) striking "Secretary of Commerce" in subsection (f) and substituting "Secretary of the Department in which the Coast Guard is operating or the Secretary of the Treasury"; and

(B) striking "Commission's" in subsection (g) and substituting "Transportation Department's".

(84) Sections 501, 502, 503, 504, and 505 of the Merchant Marine Act, 1936 (46 U.S.C. 1151, 1152, 1153, 1154, and 1155), are amended by striking "Secretary of Commerce" wherever it appears and substituting "Secretary of Transportation".

(85) Section 502 of the Merchant Marine Act, 1936 (46 U.S.C. 1152), is amended by striking "Secretary of Commerce's" in subsection (c) and substituting "Secretary of Transportation's".

(86) Section 402 of the Second Revenue Act of 1940 (46 U.S.C. 1155a), is amended by striking "United States Maritime Commission" and substituting "Secretary of Transportation".

(87) Section 506 of the Merchant Marine Act, 1936 (46 U.S.C. 1156), is amended by—

(A) striking "Commission" where it appears the first time and substituting "Secretary of Transportation"; and

(B) striking "Commission" where it appears the next four times and substituting "Secretary".

(88) Section 507 of the Merchant Marine Act, 1936 (46 U.S.C. 1157), is amended by—

(A) striking "Commission" wherever it appears and substituting "Secretary of Transportation"; and

(B) striking "its" and substituting "his".

(89) Section 508 of the Merchant Marine Act, 1936 (46 U.S.C. 1158), is amended by—

(A) striking "Commission" wherever it appears and substituting "Secretary of Transportation"; and

(B) striking "it" and substituting "the Maritime Administration of the Department of Transportation".

(90) Section 509 of the Merchant Marine Act, 1936 (46 U.S.C. 1159), is amended by striking "Secretary of Commerce" wherever it appears and substituting "Secretary of Transportation".

(91) Section 510 of the Merchant Marine Act, 1936 (46 U.S.C. 1160), is amended by—

(A) striking "Secretary of Commerce" wherever it appears other than the first time it appears in subsection (j) and substituting "Secretary of Transportation";

(B) striking "Commission" wherever it appears and substituting "Secretary of Transportation";

(C) striking "its" in subsection (f) and substituting "his";

(D) striking "Commission's" wherever it appears in subsection (g) and substituting "Secretary's"; and

(E) striking "Secretary of Commerce" the first time it appears in subsection (j) and substituting "Maritime Administration of the Department of Transportation".

(92) Section 511 of the Merchant Marine Act, 1936 (46 U.S.C. 1161), is amended by—

(A) striking "Commission" wherever it appears and substituting "Secretary of Transportation"; and

(B) striking "it" in paragraphs (g)(1) (A) and (B) and substituting "him".

(93) Section 601 of the Merchant Marine Act, 1936 (46 U.S.C. 1171), is amended by striking "Secretary of Commerce" and "Commission" wherever they appear and substituting "Secretary of Transportation".

(94) Sections 602 and 603 of the Merchant Marine Act, 1936 (46 U.S.C. 1172 and 1173), are amended by striking "Secretary of Commerce" wherever it appears and substituting "Secretary of Transportation".

(95) Section 604 of the Merchant Marine Act, 1936 (46 U.S.C. 1174), is amended by—

(A) striking “Commission” and substituting “Secretary of Transportation”;

(B) striking “it” wherever it appears and substituting “he”;

and

(C) striking the colon and the proviso.

(96) Sections 605 and 606 of the Merchant Marine Act, 1936 (46 U.S.C. 1175 and 1176), are amended by striking “Secretary of Commerce” wherever it appears and substituting “Secretary of Transportation”.

(97) Section 607 of the Merchant Marine Act, 1936 (46 U.S.C. 1177), is amended by—

(A) striking “Secretary of Commerce” whenever it appears and substituting “Secretary”; and

(B) adding at the end of subsection (k), a new paragraph (9) to read as follows:

“Secretary.”

“(9) The term ‘Secretary’ means the Secretary of Commerce with respect to eligible or qualified vessels operated or to be operated in the fisheries of the United States, and the Secretary of Transportation with respect to all other vessels.”

(98) Section 608 of the Merchant Marine Act, 1936 (46 U.S.C. 1178), is amended by—

(A) striking “Commission” wherever it appears and substituting “Secretary of Transportation”;

(B) striking “it” in the second sentence and substituting “he”;

and

(C) striking “it” in the last sentence and substituting “him”.

(99) Sections 609 and 610 of the Merchant Marine Act, 1936 (46 U.S.C. 1179 and 1180), are amended by striking “Commission” wherever it appears and substituting “Secretary of Transportation”.

(100) Section 611 of the Merchant Marine Act, 1936 (46 U.S.C. 1181), is amended by—

(A) striking “Commission” wherever it appears and substituting “Secretary of Transportation”;

(B) striking “it” in paragraph (a) and substituting “he”; and

(C) striking “any member of the Commission, or any officer thereof designated by the Commission for that purpose” and substituting “the Secretary of Transportation or any officer designated by him for that purpose”.

(101) Section 612 of the Merchant Marine Act, 1936 (46 U.S.C. 1182), is amended by—

(A) striking “Commission” wherever it appears and substituting “Secretary of Transportation”; and

(B) striking “its” wherever it appears and substituting “his”.

(102) Section 613 of the Merchant Marine Act, 1936 (46 U.S.C. 1183), is amended by—

(A) striking “Secretary of Commerce” wherever it appears and substituting “Secretary of Transportation”;

(B) striking “it” in subsections (c) and (e) and substituting “he”;

and

(C) striking “Board” and substituting “Secretary of Transportation”.

(103) Section 701 of the Merchant Marine Act, 1936 (46 U.S.C. 1191), is amended by striking “Commission” wherever it appears and substituting “Secretary of Transportation”.

(104) Section 702 of the Merchant Marine Act, 1936 (46 U.S.C. 1192), is amended by—

(A) striking "Commission" wherever it appears and substituting "Secretary of Transportation"; and

(B) striking "it" and substituting "he".

(105) Section 703 of the Merchant Marine Act, 1936 (46 U.S.C. 1193), is amended by—

(A) striking "Commission" wherever it appears and substituting "Secretary of Transportation"; and

(B) striking "Commission's" in subsection (c) and substituting "Secretary's".

(106) Section 704 of the Merchant Marine Act, 1936 (46 U.S.C. 1194), is amended by—

(A) striking "Commission" the first time it appears in the first sentence and substituting "Department of Transportation";

(B) striking "Commission" the second time it appears in the first sentence and substituting "Secretary of Transportation"; and

(C) striking all after the first sentence.

(107) Section 705 of the Merchant Marine Act, 1936 (46 U.S.C. 1195), is amended by—

(A) striking "Commission" wherever it appears and substituting "Secretary of Transportation";

(B) striking "its" in the first sentence and substituting "the Department of Transportation's"; and

(C) striking "its" in the second sentence and substituting "his".

(108) Section 706 of the Merchant Marine Act, 1936 (46 U.S.C. 1196), is amended by—

(A) striking "Commission" wherever it appears and substituting "Secretary of Transportation";

(B) striking "its" in the first sentence and substituting "the Department of Transportation's";

(C) striking "Commission's" in the second sentence and substituting "the Department of Transportation's"; and

(D) striking "its" in subsection (b) and substituting "his".

(109) Section 707 of the Merchant Marine Act, 1936 (46 U.S.C. 1197) is amended by—

(A) striking "Commission" wherever it appears and substituting "Secretary of Transportation"; and

(B) striking "Commission's" in subsection (b) and substituting "Secretary's".

(110) Section 708 of the Merchant Marine Act, 1936 (46 U.S.C. 1198) is amended by—

(A) striking "Commission" and substituting "Secretary of Transportation"; and

(B) striking "its" and substituting "his".

(111) Section 709 of the Merchant Marine Act, 1936 (46 U.S.C. 1199) is amended by striking "Commission" wherever it appears and substituting "Secretary of Transportation".

(112) Section 710 of the Merchant Marine Act, 1936 (46 U.S.C. 1200) is amended by—

(A) striking "Commission's" and substituting "Secretary of Transportation's"; and

(B) striking "Commission" wherever it appears and substituting "Secretary of Transportation".

(113) Section 711 of the Merchant Marine Act, 1936 (46 U.S.C. 1201) is amended by striking "Commission" wherever it appears and substituting "Secretary of Transportation".

(114) Section 712 of the Merchant Marine Act, 1936 (46 U.S.C. 1202) is amended by—

- (A) striking "Commission" wherever it appears and substituting "Secretary of Transportation";
- (B) striking "itself" in subsection (a) and substituting "himself";
- (C) striking "its" in subsection (a) and substituting "his"; and
- (D) striking "it" in subsection (a) and substituting "he".
- (115) Section 713 of the Merchant Marine Act, 1936 (46 U.S.C. 1203) is amended by—
- (A) striking "Commission" wherever it appears and substituting "Secretary of Transportation"; and
- (B) striking "its" in subsection "the Department of Transportation's".
- (116) Section 714 of the Merchant Marine Act, 1936 (46 U.S.C. 1204) is amended by—
- (A) striking "Secretary of Commerce" wherever it appears and substituting "Secretary of Transportation"; and
- (B) striking "Secretary of Commerce's" and substituting "Secretary of Transportation's".
- (117) Section 715 of the Merchant Marine Act, 1936 (46 U.S.C. 1205) is amended by striking "Secretary of Commerce" wherever it appears and substituting "Secretary of Transportation".
- (118) Section 716 of the Merchant Marine Act, 1936 (46 U.S.C. 1206) is amended by—
- (A) striking "Department of Commerce" and substituting "Department of Transportation"; and
- (B) striking "Secretary of Commerce" and substituting "Secretary of Transportation".
- (119) Section 801 of the Merchant Marine Act, 1936 (46 U.S.C. 1211) is amended by—
- (A) striking "Commission" wherever it appears and substituting "Secretary of Transportation"; and
- (B) striking "it" the first time it appears in clause (3) and substituting "he".
- (120) Section 802 of the Merchant Marine Act, 1936 (46 U.S.C. 1212) is amended by striking "Commission" wherever it appears and substituting "Secretary of Transportation".
- (121) Sections 809 and 810 of the Merchant Marine Act, 1936 (46 U.S.C. 1213 and 1222) are amended by striking "Secretary of Commerce" wherever it appears and substituting "Secretary of Transportation".
- (122) Section 805 of the Merchant Marine Act, 1936 (46 U.S.C. 1223) is amended by striking "Commission" wherever it appears and substituting "Secretary of Transportation".
- (123) Section 806(a) of the Merchant Marine Act, 1936 (46 U.S.C. 1224) is amended by striking "Commission" and substituting "Commission or the Secretary of Transportation".
- (124) Section 807 of the Merchant Marine Act, 1936 (46 U.S.C. 1225) is amended by—
- (A) striking "or before the Commission" in the first sentence and substituting "or before the Commission or the Secretary of Transportation"; and
- (B) thereafter, striking the word "Commission" wherever it appears and substituting "Secretary of Transportation".
- (125) Section 806 (c) and (d) of the Merchant Marine Act, 1936 (46 U.S.C. 1228) is amended by—
- (A) striking "Commission" substituting "Commission or the Secretary of Transportation";

(B) striking "United States Maritime Commission" and substituting "Federal Maritime Commission or the Secretary of Transportation"; and

(C) inserting "or him" after "functions transferred to it" and after "vested in it" in the last paragraph.

(126) Section 901(b) of the Merchant Marine Act, 1936 (46 U.S.C. 1241(b)) is amended by striking "Secretary of Commerce" wherever it appears in subsection (b)(2) and substituting "Secretary of Transportation".

(127) The Act of March 26, 1934 (46 U.S.C. 1241-1), is amended by striking "Commission" and substituting "Secretary of Transportation".

(128) Section 801 of the Act of June 2, 1951 (46 U.S.C. 1241a), is amended by—

(A) striking "Secretary of Commerce" wherever it appears and substituting "Secretary of Transportation"; and

(B) striking "Department of Commerce" and substituting "Department of Transportation".

(129) Section 101 of the Act of June 20, 1956 (46 U.S.C. 1241b), is amended by striking "Secretary of Commerce" and substituting "Secretary of Transportation".

(130) The Act of August 1, 1956 (46 U.S.C. 1241c), is amended by striking "Secretary of Commerce" wherever it appears and substituting "Secretary of Transportation".

(131) Section 902 of the Merchant Marine Act, 1936 (46 U.S.C. 1242), is amended by—

(A) striking "Commission" wherever it appears and substituting "Secretary of Transportation";

(B) striking "Commission's" wherever it appears and substituting "Secretary's";

(C) striking "United States Maritime Commission" wherever it appears and substituting "Secretary of Transportation";

(D) striking "its" the first time it appears and substituting "his"; and

(E) striking "its" the second time it appears and substituting "the Department of Transportation's".

(132) The Act of June 29, 1940 (46 U.S.C. 1242a), is amended by—

(A) striking "United States Maritime Commission" and substituting "Secretary of Transportation";

(B) striking "Commission" wherever it appears and substituting "Secretary of Transportation"; and

(C) striking "it" in subsection (b) and substituting "he".

(133) Section 905 of the Merchant Marine Act, 1936 (46 U.S.C. 1244), is amended by—

(A) striking "Secretary of Commerce" in subsection (a) and substituting "Secretary of Transportation"; and

(B) striking subsection (e).

(134) Section 908 of the Merchant Marine Act, 1936 (46 U.S.C. 1247), is amended by striking "Secretary of Commerce" wherever it appears and substituting "Secretary of Transportation".

(135) Section 1101 of the Merchant Marine Act, 1936 (46 U.S.C. 1271), is amended by—

(A) striking "Secretary of Commerce" wherever it appears and substituting "Secretary"; and

(B) adding a new subsection (n) to read as follows:

"(n) The term 'Secretary' means the Secretary of Commerce with respect to fishing vessels and fishing facilities as provided by this "Secretary."

title, and the Secretary of Transportation with respect to all other vessels.”

(136) Sections 1102, 1103, 1104, 1105, 1106, 1108, 1109, and 1110 of the Merchant Marine Act, 1936 (46 U.S.C. 1272, 1273, 1274, 1275, 1276, 1279a, 1279b, and 1279c), are amended by striking “Secretary of Commerce” wherever it appears and substituting “Secretary”.

(137) Section 101 of Public Law 85-469 (46 U.S.C. 1280), is amended by striking “Secretary of Commerce” and substituting “Secretary”.

(138) Section 1201(e) of the Merchant Marine Act, 1936 (46 U.S.C. 1281), is amended by striking “Secretary of Commerce” and substituting “Secretary of Transportation”.

(139) Section 1208 of the Merchant Marine Act, 1936 (46 U.S.C. 1288) is amended by striking “Secretary of Commerce” and substituting “Secretary of Transportation”.

(140) Section 601 of the Act of November 1, 1951 (46 U.S.C. 1288a), is amended by striking “Secretary of Commerce” and substituting “Secretary of Transportation”.

(141) Section 1213 of the Merchant Marine Act, 1936 (46 U.S.C. 1293), is amended by striking “Secretary of Commerce” wherever it appears and substituting “Secretary of Transportation”.

(142) Section 1301 of the Merchant Marine Act, 1936 (46 U.S.C. 1295), is amended by—

(A) striking “Secretary of Commerce” in paragraph (1) and substituting “Secretary of Transportation”; and

(B) striking “Assistant Secretary of Commerce for Maritime Affairs” in paragraph (2) and substituting “Maritime Administrator”.

(143) Section 1302 of the Merchant Marine Act, 1936 (46 U.S.C. 1295a), is amended by striking “Secretary of Commerce” in paragraph (1) and substituting “Secretary of Transportation”.

(144) Section 1303 of the Merchant Marine Act, 1936 (46 U.S.C. 1295b), is amended by—

(A) striking “and the Secretary of Transportation” in paragraph (e)(3);

(B) striking “the Secretary of the Department in which the United States Coast Guard is operating with respect to the United States Coast Guard and” in paragraph (e)(4); and

(C) striking “Assistant Secretary of Commerce for Maritime Affairs” in paragraph (i)(1) and substituting “Maritime Administrator”.

(145) Section 1304 of the Merchant Marine Act, 1936 (46 U.S.C. 1295c), is amended by—

(A) striking “and the Secretary of Transportation” in paragraph (g)(5); and

(B) striking “the Secretary of the department in which the United States Coast Guard is operating with respect to the United States Coast Guard and” in paragraph (g)(6).

(146) Section 14 of the Carriage of Goods by Sea Act (46 U.S.C. 1313) is amended by striking “Secretary of Commerce” and substituting “Secretary of Transportation”.

(147) Section 2 of the Civilian Nautical School Act (46 U.S.C. 1332) is amended by—

(A) striking “United States Maritime Commission” and substituting “Secretary of Transportation”; and

(B) striking “Commission” and substituting “Secretary”; and

(C) striking “it” and substituting “he”.

(148) Section 3 of the Civilian Nautical School Act (46 U.S.C. 1333) is amended by—

(A) striking "Board of Supervising Inspectors, with the approval of the Secretary of Commerce," in subsection (a) and substituting "Secretary of the Department in which the Coast Guard is operating or Secretary of the Treasury"; and

(B) striking "Secretary of Commerce" in subsection (b) and substituting "Secretary of the Department in which the Coast Guard is operating or Secretary of the Treasury".

(149) Section 3 of the Maritime Academy Act of 1958 (46 U.S.C. 1382) is amended by striking "Secretary of Commerce" and substituting "Secretary of Transportation".

(150) Section 305(b) of the Act of June 19, 1934 (47 U.S.C. 305(b)), is amended by striking "United States Shipping Board Bureau or the United States Shipping Board Merchant Fleet Corporation" and substituting "Maritime Administration of the Department of Transportation".

(151) Section 352(a)(2) of the Act of June 19, 1934 (47 U.S.C. 352(a)(2)), is amended by striking "United States Maritime Commission" and substituting "Maritime Administration of the Department of Transportation".

(152) Sections 1, 2, and 3 of the Act of August 9, 1954 (50 U.S.C. 196, 197, and 198), are amended by striking "Secretary of Commerce" wherever it appears and substituting "Secretary of Transportation".

(153) Section 3 of the Merchant Ship Sales Act (50 U.S.C. App. 1736) is amended by—

(A) striking "Commission" and substituting "Secretary";

(B) striking "United States Maritime Commission" and substituting "Secretary of Transportation"; and

(C) striking "Commission" wherever it appears and substituting "Secretary".

(154) Sections 4, 6, 7, 8, 10, and 13 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1737, 1739, 1740, 1741, 1743, and 1746) are amended by striking "Commission" wherever it appears and substituting "Secretary".

(155) Section 5 of the Merchant Ship Sales Act (50 U.S.C. App. 1738), is amended by—

(A) striking "Commission" wherever it appears and substituting "Secretary";

(B) striking "its" wherever it appears in subsection (a) and substituting "his";

(C) striking "Maritime Commission" and substituting "Secretary of Transportation";

(D) striking "Federal Maritime Board" wherever it appears and substituting "Maritime Administration"; and

(E) striking "Secretary of Commerce" wherever it appears and substituting "Secretary of Transportation".

(156) Section 2 of the Act of June 29, 1949 (50 U.S.C. App. 1738a), is amended by striking "Commission" wherever it appears and substituting "Secretary of Transportation".

(157) Section 11 of the Merchant Ship Sales Act (50 U.S.C. App. 1744) is amended by—

(A) striking "Commission" wherever it appears and substituting "Secretary of Transportation";

(B) striking "it" the first time it appears in subsection (a)(1) and where it appears in subsection (a)(2) and substituting "the Department of Transportation";

(C) striking "it" where it appears for the second time in subsection (a)(1) and substituting "he"; and

(D) striking "Secretary of Commerce" and substituting "Secretary of Transportation".

(158) Section 12 of the Merchant Ship Sales Act (50 U.S.C. App. 1745) is amended by—

(A) striking "Commission" wherever it appears and substituting "Secretary"; and

(B) striking "Secretary of Commerce" and substituting "Secretary of Transportation".

(159) Section 26 of the Merchant Marine Act, 1920 (46 U.S.C. 882) is amended by striking the words "Secretary of Commerce", and substituting "Secretary of the Department in which the Coast Guard is operating."

Approved August 6, 1981.

LEGISLATIVE HISTORY—H.R. 4074:

HOUSE REPORT No. 97-199 (Comm. on Merchant Marine and Fisheries).
CONGRESSIONAL RECORD, Vol. 127 (1981):

July 27, considered and passed House.
July 29, considered and passed Senate.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 17, No. 32 (1981):
Aug. 6. Presidential statement.

B. PORT REGULATION AND DEVELOPMENT

Ports and Waterways Safety Act of 1972*

* Pub. L. 92-340, 86 Stat. 424; 46 U.S.C. §391 (1976).

Public Law 92-340

July 10, 1972
[H. R. 8140]

AN ACT

To promote the safety of ports, harbors, waterfront areas, and navigable waters of the United States.

Ports and Water-
ways Safety Act
of 1972.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Ports and Waterways Safety Act of 1972".

TITLE I—PORTS AND WATERWAYS SAFETY AND
ENVIRONMENTAL QUALITY

SEC. 101. In order to prevent damage to, or the destruction or loss of any vessel, bridge, or other structure on or in the navigable waters of the United States, or any land structure or shore area immediately adjacent to those waters; and to protect the navigable waters and the resources therein from environmental harm resulting from vessel or structure damage, destruction, or loss, the Secretary of the department in which the Coast Guard is operating may—

(1) establish, operate, and maintain vessel traffic services and systems for ports, harbors, and other waters subject to congested vessel traffic;

(2) require vessels which operate in an area of a vessel traffic service or system to utilize or comply with that service or system, including the carrying or installation of electronic or other devices necessary for the use of the service or system;

(3) control vessel traffic in areas which he determines to be especially hazardous, or under conditions of reduced visibility, adverse weather, vessel congestion, or other hazardous circumstances by—

(i) specifying times of entry, movement, or departure to, from, within, or through ports, harbors, or other waters;

(ii) establishing vessel traffic routing schemes;

(iii) establishing vessel size and speed limitations and vessel operating conditions; and

(iv) restricting vessel operation, in a hazardous area or under hazardous conditions, to vessels which have particular operating characteristics and capabilities which he considers necessary for safe operation under the circumstances;

(4) direct the anchoring, mooring, or movement of a vessel when necessary to prevent damage to or by that vessel or her cargo, stores, supplies, or fuel;

(5) require pilots on self-propelled vessels engaged in the foreign trades in areas and under circumstances where a pilot is not otherwise required by State law to be on board until the State having jurisdiction of an area involved establishes a requirement for a pilot in that area or under the circumstances involved;

(6) establish procedures, measures, and standards for the handling, loading, discharge, storage, stowage, and movement, including the emergency removal, control and disposition, of explosives or other dangerous articles or substances (including the substances described in section 4417a(2)(A), (B), and (C) of the Revised Statutes of the United States (46 U.S.C. 391a(2)(A), (B), and (C)) on structures subject to this title;

Post. p. 427.

(7) prescribe minimum safety equipment requirements for structures subject to this title to assure adequate protection from fire, explosion, natural disasters, and other serious accidents or casualties;

(8) establish water or waterfront safety zones or other measures for limited, controlled, or conditional access and activity when necessary for the protection of any vessel, structure, waters, or shore area; and

(9) establish procedures for examination to assure compliance with the minimum safety equipment requirements for structures.

United States.

SEC. 102. (a) For the purpose of this Act, the term "United States" includes the fifty States, the District of Columbia, Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.

(b) Nothing contained in this title supplants or modifies any treaty or Federal statute or authority granted thereunder, nor does it prevent a State or political subdivision thereof from prescribing for structures only higher safety equipment requirements or safety standards than those which may be prescribed pursuant to this title.

(c) In the exercise of his authority under this title, the Secretary shall consult with other Federal agencies, as appropriate, in order to give due consideration to their statutory and other responsibilities, and to assure consistency of regulations applicable to vessels, structures, and areas covered by this title. The Secretary may also consider, utilize, and incorporate regulations or similar directory materials issued by port or other State and local authorities.

Panama Canal;
Saint Lawrence
Seaway.

(d) This title shall not be applicable to the Panama Canal. The authority granted to the Secretary under section 101 of this title shall not be delegated with respect to the Saint Lawrence Seaway to any agency other than the Saint Lawrence Seaway Development Corporation. Any other authority granted the Secretary under this title shall be delegated to the Saint Lawrence Seaway Development Corporation to the extent that the Secretary determines such delegation is necessary for the proper operation of the Seaway.

(e) In carrying out his duties and responsibilities under this title to promote the safe and efficient conduct of maritime commerce the Secretary shall consider fully the wide variety of interests which may be affected by the exercise of his authority hereunder. In determining the need for, and the substance of, any rule or regulation or the exercise of other authority hereunder the Secretary shall, among other things, consider—

- (1) the scope and degree of the hazards;
 - (2) vessel traffic characteristics including minimum interference with the flow of commercial traffic, traffic volume, the sizes and types of vessels, the usual nature of local cargoes, and similar factors;
 - (3) port and waterway configurations and the differences in geographic, climatic, and other conditions and circumstances;
 - (4) environmental factors;
 - (5) economic impact and effects;
 - (6) existing vessel traffic control systems, services, and schemes;
- and
- (7) local practices and customs, including voluntary arrangements and agreements within the maritime community.

Investigatory
powers.

Sec. 103. The Secretary may investigate any incident, accident, or act involving the loss or destruction of, or damage to, any structure subject to this title, or which affects or may affect the safety or environmental quality of the ports, harbors, or navigable waters of the United States. In any investigation under this title, the Secretary may issue a subpoena to require the attendance of any witness and the production of documents and other evidence. In case of refusal to obey a subpoena issued to any person, the Secretary may request the Attorney General to invoke the aid of the appropriate district court of the United States to compel compliance. Witnesses may be paid fees for travel and attendance at rates not exceeding those allowed in a district court of the United States.

SEC. 104. The Secretary may issue reasonable rules, regulations, and standards necessary to implement this title. In the exercise of his rulemaking authority the Secretary is subject to the provisions of chapters 5 and 7 of title 5, United States Code. In preparing proposed rules, regulations, and standards, the Secretary shall provide an adequate opportunity for consultation and comment to State and local governments, representatives of the marine industry, port and harbor authorities, environmental groups, and other interested parties.

Rulemaking authority.

80 Stat. 380, 392; 81 Stat. 195. 5 USC 500, 701.

SEC. 105. The Secretary shall, within one year after the effective date of this Act, report to the Congress his recommendations for legislation which may be necessary to achieve coordination and/or eliminate duplication between the functions authorized by this Act and the functions of any other agencies.

Report to Congress.

SEC. 106. Whoever violates a regulation issued under this title shall be liable to a civil penalty of not more than \$10,000. The Secretary may assess and collect any civil penalty incurred under this title and, in his discretion, remit, mitigate, or compromise any penalty. Upon failure to collect or compromise a penalty, the Secretary may request the Attorney General to commence an action for collection in any district court of the United States. A vessel used or employed in a violation of a regulation under this title shall be liable in rem and may be proceeded against in any district court of the United States having jurisdiction.

Penalty.

SEC. 107. Whoever willfully violates a regulation issued under this title shall be fined not less than \$5,000 or more than \$50,000 or imprisoned for not more than five years, or both.

TITLE II--VESSELS CARRYING CERTAIN CARGOES IN BULK

SEC. 201. Section 4417a of the Revised Statutes of the United States (46 U.S.C. 391a) is hereby amended to read as follows:

"SEC. 4417a. (1) STATEMENT OF POLICY.—The Congress hereby finds and declares—

"That the carriage by vessels of certain cargoes in bulk creates substantial hazards to life, property, the navigable waters of the United States (including the quality thereof) and the resources contained therein and of the adjoining land, including but not limited to fish, shellfish, and wildlife, marine and coastal ecosystems and recreational and scenic values, which waters and resources are hereafter in this section referred to as the 'marine environment'.

"That existing standards for the design, construction, alteration, repair, maintenance and operation of such vessels must be improved for the adequate protection of the marine environment.

"That it is necessary that there be established for all such vessels documented under the laws of the United States or entering the navigable waters of the United States comprehensive minimum standards of design, construction, alteration, repair, maintenance, and operation to prevent or mitigate the hazards to life, property, and the marine environment.

"(2) VESSELS INCLUDED.—All vessels, regardless of tonnage size, or manner of propulsion, and whether self-propelled or not, and whether carrying freight or passengers for hire or not, which are documented under the laws of the United States or enter the navigable waters of the United States, except public vessels other than those engaged in

commercial service, that shall have on board liquid cargo in bulk which is—

“(A) inflammable or combustible, or

“(B) oil, of any kind or in any form, including but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, or

“(C) designated as a hazardous polluting substance under section 12(a) of the Federal Water Pollution Control Act (33 U.S.C. 1162);

84 Stat. 98.

46 USC 351
of seq.

82 Stat. 341.
46 USC 391a.

shall be considered steam vessels for the purposes of title 52 of the Revised Statutes of the United States and shall be subject to the provisions thereof: *Provided*, That this section shall not apply to vessels having on board the substances set forth in (A), (B), or (C) above only for use as fuel or stores or to vessels carrying such cargo only in drums, barrels, or other packages: *And provided further*, That nothing contained herein shall be deemed to amend or modify the provisions of section 4 of Public Law 90-397 with respect to certain vessels of not more than five hundred gross tons: *And provided further*, That this section shall not apply to vessels of not more than five hundred gross tons documented in the service of oil exploitation which are not tank vessels and which would be subject to this section only because of the transfer of fuel from the vessels' own fuel supply tanks to offshore drilling or production facilities.

“(3) RULES AND REGULATIONS.—In order to secure effective provision (A) for vessel safety, and (B) for protection of the marine environment, the Secretary of the department in which the Coast Guard is operating (hereafter referred to in this section as the ‘Secretary’) shall establish for the vessels to which this section applies such additional rules and regulations as may be necessary with respect to the design and construction, alteration, repair, and maintenance of such vessels, including, but not limited to, the superstructures, hulls, places for stowing and carrying such cargo, fittings, equipment, appliances, propulsive machinery, auxiliary machinery, and boilers thereof; and with respect to all materials used in such construction, alteration, or repair; and with respect to the handling and stowage of such cargo, the manner of such handling or stowage, and the machinery and appliances used in such handling and stowage; and with respect to equipment and appliances for life saving, fire protection, and the prevention and mitigation of damage to the marine environment; and with respect to the operation of such vessels; and with respect to the requirements of the manning of such vessels and the duties and qualifications of the officers and crew thereof; and with respect to the inspection of all the foregoing. In establishing such rules and regulations the Secretary may, after hearing as provided in subsection (4), adopt rules of the American Bureau of Shipping or similar American classification society for classed vessels insofar as such rules pertain to the efficiency of hulls and the reliability of machinery of vessels to which this section applies. In establishing such rules and regulations, the Secretary shall give due consideration to the kinds and grades of such cargo permitted to be on board such vessel. In establishing such rules and regulations the Secretary shall, after consultation with the Secretary of Commerce and the Administrator of the Environmental Protection Agency, identify those established for protection of the marine environment and those established for vessel safety.

“(4) ADOPTION OF RULES AND REGULATIONS.—Before any rules or regulations, or any alteration, amendment, or repeal thereof, are approved by the Secretary under the provisions of this section, except

in an emergency, the Secretary shall (A) consult with other appropriate Federal departments and agencies, and particularly with the Administrator of the Environmental Protection Agency and the Secretary of Commerce, with regard to all rules and regulations for the protection of the marine environment, (B) publish proposed rules and regulations, and (C) permit interested persons an opportunity for hearing. In prescribing rules or regulations, the Secretary shall consider, among other things, (i) the need for such rules or regulations, (ii) the extent to which such rules or regulations will contribute to safety or protection of the marine environment, and (iii) the practicability of compliance therewith, including cost and technical feasibility.

Regulations.
publication; hear-
ing opportunity.

“(5) RULES AND REGULATIONS FOR SAFETY; INSPECTION; PERMITS; FOREIGN VESSELS.—No vessel subject to the provisions of this section shall, after the effective date of the rules and regulations for vessel safety established hereunder, have on board such cargo, until a certificate of inspection has been issued to such vessel in accordance with the provisions of title 52 of the Revised Statutes of the United States and until a permit has been endorsed on such certificate of inspection by the Secretary, indicating that such vessel is in compliance with the provisions of this section and the rules and regulations for vessel safety established hereunder, and showing the kinds and grades of such cargo that such vessel may have on board or transport. Such permit shall not be endorsed by the Secretary on such certificate of inspection until such vessel has been inspected by the Secretary and found to be in compliance with the provisions of this section and the rules and regulations for vessel safety established hereunder. For the purpose of such inspection, approved plans and certificates of class of the American Bureau of Shipping or other recognized classification society for classed vessels may be accepted as evidence of the structural efficiency of the hull and the reliability of the machinery of such classed vessels except as far as existing law places definite responsibility on the Coast Guard. A certificate issued under the provisions of this section shall be valid for a period of time not to exceed the duration of the certificate of inspection on which such permit is endorsed, and shall be subject to revocation by the Secretary whenever he shall find that the vessel concerned does not comply with the conditions upon which such permit was issued: *Provided*, That rules and regulations for vessel safety established hereunder and the provisions of this subsection shall not apply to vessels of a foreign nation having on board a valid certificate of inspection recognized under law or treaty by the United States: *And provided further*, That no permit shall be issued under the provisions of this section authorizing the presence on board any vessel of any of the materials expressly prohibited from being thereon by subsection (3) of section 4472 of this title.

46 USC 361 or
seq.

46 USC 170.

“(6) RULES AND REGULATIONS FOR PROTECTION OF THE MARINE ENVIRONMENT; INSPECTION; CERTIFICATION.—No vessel subject to the provisions of this section shall, after the effective date of rules and regulations for protection of the marine environment, have on board such cargo, until a certificate of compliance, or an endorsement on the certificate of inspection for domestic vessels, has been issued by the Secretary indicating that such vessel is in compliance with such rules and regulations. Such certificate of compliance or endorsement shall not be issued by the Secretary until such vessel has been inspected by the Secretary and found to be in compliance with the rules and regulations for protection of the marine environment established hereunder. A certificate of compliance or an endorsement issued under this subsection shall be valid for a period specified therein by the Secretary and shall be subject to revocation whenever the Secretary finds that the vessel concerned does not comply with the conditions upon which such certificate or endorsement was issued.

Publication.

“(7) RULES AND REGULATIONS FOR PROTECTION OF THE MARINE ENVIRONMENT RELATING TO VESSEL DESIGN AND CONSTRUCTION, ALTERATION, AND REPAIR; INTERNATIONAL AGREEMENT.—(A) The Secretary shall begin publication as soon as practicable of proposed rules and regulations setting forth minimum standards of design, construction, alteration, and repair of the vessels to which this section applies for the purpose of protecting the marine environment. Such rules and regulations shall, to the extent possible, include but not be limited to standards to improve vessel maneuvering and stopping ability and otherwise reduce the possibility of collision, grounding, or other accident, to reduce cargo loss following collision, grounding, or other accident, and to reduce damage to the marine environment by normal vessel operations such as ballasting and deballasting, cargo handling, and other activities.

“(B) The Secretary shall cause proposed rules and regulations published by him pursuant to subsection (7)(A) to be transmitted to appropriate international forums for consideration as international standards.

Effective date.

“(C) Rules and regulations published pursuant to subsection (7)(A) shall be effective not earlier than January 1, 1974, unless the Secretary shall earlier establish rules and regulations consonant with international treaty, convention, or agreement, which generally address the regulation of similar topics for the protection of the marine environment. In the absence of the promulgation of such rules and regulations consonant with international treaty, convention, or agreement, the Secretary shall establish an effective date not later than January 1, 1976, for rules and regulations previously published pursuant to this subsection (7) which he then deems appropriate.

“(D) Any rule or regulation for protection of the marine environment promulgated pursuant to this subsection (7) shall be equally applicable to foreign vessels and United States-flag vessels operating in the foreign trade. If a treaty, convention, or agreement provides for reciprocity of recognition of certificates or other documents to be issued to vessels by countries party thereto, which evidence compliance with rules and regulations issued pursuant to such treaty, convention, or agreement, the Secretary, in his discretion, may accept such certificates or documents as evidence of compliance with such rules and regulations in lieu of the certificate of compliance otherwise required by subsection (6) of this section.

“(8) SHIPPING DOCUMENTS.—Vessels subject to the provisions of this section shall have on board such shipping documents as may be prescribed by the Secretary indicating the kinds, grades, and approximate quantities of such cargo on board such vessel, the shippers and consignees thereof, and the location of the shipping and destination points.

“(9) OFFICERS; TANKERMEN; CERTIFICATION.—(A) In all cases where the certificate of inspection does not require at least two licensed officers, the Secretary shall enter in the permit issued to any vessel under the provisions of this section the number of the crew required to be certified as tankermen.

“(B) The Secretary shall issue to applicants certificates as tankermen, stating the kinds of cargo the holder of such certificate is, in the

judgment of the Secretary, qualified to handle aboard vessels with safety, upon satisfactory proof and examination, in form and manner prescribed by the Secretary, that the applicant is in good physical condition, that such applicant is trained in and capable efficiently to perform the necessary operations aboard vessels having such cargo on board, and that the applicant fulfills the qualifications of tankerman as prescribed by the Secretary under the provisions of this section. Such certificates shall be subject to suspension or revocation on the same grounds and in the same manner and with like procedure as is provided in the case of suspension or revocation of licenses of officers under the provisions of section 4450 of this title.

46 USC 239.

“(10) EFFECTIVE DATE OF RULES AND REGULATIONS.—Except as otherwise provided herein, the rules and regulations to be established pursuant to this section shall become effective ninety days after their promulgation unless the Secretary shall for good cause fix a different time. If the Secretary shall fix an effective date later than ninety days after such promulgation, his determination to fix such a later date shall be accompanied by an explanation of such determination which he shall publish and transmit to the Congress.

“(11) PENALTIES.—(A) The owner, master, or person in charge of any vessel subject to the provisions of this section, or any or all of them, who shall violate the provisions of this section, or the rules and regulations established hereunder, shall be liable to a civil penalty of not more than \$10,000.

“(B) The owner, master, or person in charge of any vessel subject to the provisions of this section, or any or all of them, who shall knowingly and willfully violate the provisions of this section or the rules and regulations established hereunder, shall be subject to a fine of not less than \$5,000 or more than \$50,000, or imprisonment for not more than five years, or both.

“(C) Any vessel subject to the provisions of this section, which shall be in violation of this section or the rules and regulations established hereunder, shall be liable in rem and may be proceeded against in the United States district court for any district in which the vessel may be found.

“(12) INJUNCTIVE PROCEEDINGS.—The United States district courts shall have jurisdiction for cause shown to restrain violations of this section or the rules and regulations promulgated hereunder.

“(13) DENIAL OF ENTRY.—The Secretary may, subject to recognized principles of international law, deny entry into the navigable waters of the United States to any vessel not in compliance with the provisions of this section or the regulations promulgated thereunder.”

SEC. 202. Regulations previously issued under statutory provisions repealed, modified, or amended by this title shall continue in effect as though promulgated under the authority of section 4417a of the Revised Statutes of the United States (46 U.S.C. 391a), as amended by this title, until expressly abrogated, modified, or amended by the Secretary of the Department in which the Coast Guard is operating under the regulatory authority of such section 4417a as so amended. Any proceeding under such section 4417a for a violation which occurred before the effective date of this title may be initiated or continued to conclusion as though such section 4417a had not been amended hereby.

Savings provision.

Report to Con-
gress.

SEC. 203. The Secretary of the Department in which the Coast Guard is operating shall, for a period of ten years following the enactment of this title, make a report to the Congress at the beginning of each regular session, regarding his activities under this title. Such report shall include but not be limited to (A) a description of the rules and regulations prescribed by the Secretary (i) to improve vessel maneuvering and stopping ability and otherwise reduce the risks of collisions, groundings, and other accidents, (ii) to reduce cargo loss in the event of collisions, groundings, and other accidents, and (iii) to reduce damage to the marine environment from the normal operation of the vessels to which this title applies, (B) the progress made with respect to the adoption of international standards for the design, construction, alteration, and repair of vessels to which this title applies for protection of the marine environment, and (C) to the extent that the Secretary finds standards with respect to the design, construction, alteration, and repair of vessels for the purposes set forth in (A) (i), (ii), or (iii) above not possible, an explanation of the reasons therefor.

Approved July 10, 1972.

Deepwater Port Act of 1974*

* Pub. L. 93-627, 88 Stat. 2126; 33 U.S.C. §1501-24 (1976).

Public Law 93-627

AN ACT

January 3, 1975
[H. R. 10701]

To regulate commerce, promote efficiency in transportation, and protect the environment, by establishing procedures for the location, construction, and operation of deepwater ports off the coasts of the United States, and for other purposes.

Deepwater Port
Act of 1974.
33 USC 1501
note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Deepwater Port Act of 1974".

DECLARATION OF POLICY

33 USC 1501.

SEC. 2. (a) It is declared to be the purposes of the Congress in this Act to—

(1) authorize and regulate the location, ownership, construction, and operation of deepwater ports in waters beyond the territorial limits of the United States;

(2) provide for the protection of the marine and coastal environment to prevent or minimize any adverse impact which might occur as a consequence of the development of such ports;

(3) protect the interests of the United States and those of adjacent coastal States in the location, construction, and operation of deepwater ports; and

(4) protect the rights and responsibilities of States and communities to regulate growth, determine land use, and otherwise protect the environment in accordance with law.

(b) The Congress declares that nothing in this Act shall be construed to affect the legal status of the high seas, the superjacent airspace, or the seabed and subsoil, including the Continental Shelf.

DEFINITIONS

SEC. 3. As used in this Act, unless the context otherwise requires, the term—

33 USC 1502.

(1) "adjacent coastal State" means any coastal State which (A) would be directly connected by pipeline to a deepwater port, as proposed in an application; (B) would be located within 15 miles of any such proposed deepwater port; or (C) is designated by the Secretary in accordance with section 9(a)(2) of this Act;

(2) "affiliate" means any entity owned or controlled by, any person who owns or controls, or any entity which is under common ownership or control with an applicant, licensee, or any person required to be disclosed pursuant to section 5(c)(2) (A) or (B);

(3) "antitrust laws" includes the Act of July 2, 1890, as amended, the Act of October 15, 1914, as amended, the Federal Trade Commission Act (15 U.S.C. 41 et seq., and sections 73 and 74 of the Act of August 27, 1894, as amended;

15 USC 1, 12.

(4) "application" means any application submitted under this Act (A) for a license for the ownership, construction, and operation of a deepwater port; (B) for transfer of any such license; or (C) for any substantial change in any of the conditions and provisions of any such license;

15 USC 8, 9.

(5) "citizen of the United States" means any person who is a United States citizen by law, birth, or naturalization, any State, any agency of a State or a group of States, or any corporation, partnership, or association organized under the laws of any State which has as its president or other executive officer and as its chairman of the board of directors, or holder of a similar office, a person who is a United States citizen by law, birth or naturalization and which has no more of its directors who are not United States citizens by law, birth or naturalization than constitute a minority of the number required for a quorum necessary to conduct the business of the board;

(6) "coastal environment" means the navigable waters (including the lands therein and thereunder) and the adjacent shorelines including waters therein and thereunder). The term includes transitional and intertidal areas, bays, lagoons, salt marshes, estuaries, and beaches; the fish, wildlife and other living resources thereof; and the recreational and scenic values of such lands, waters and resources;

(7) "coastal State" means any State of the United States in or bordering on the Atlantic, Pacific, or Arctic Oceans, or the Gulf of Mexico;

(8) "construction" means the supervising, inspection, actual building, and all other activities incidental to the building, repairing, or expanding of a deepwater port or any of its components, including, but not limited to, pile driving and bulkheading, and alterations, modifications, or additions to the deepwater port;

(9) "control" means the power, directly or indirectly, to determine the policy, business practices, or decisionmaking process of another person, whether by stock or other ownership interest, by representation on a board of directors or similar body, by contract or other agreement with stockholders or others, or otherwise;

(10) "deepwater port" means any fixed or floating manmade structures other than a vessel, or any group of such structures, located beyond the territorial sea and off the coast of the United States and which are used or intended for use as a port or terminal for the loading or unloading and further handling of oil for transportation to any State, except as otherwise provided in section 23. The term includes all associated components and equipment, including pipelines, pumping stations, service platforms, mooring buoys, and similar appurtenances to the extent they are located seaward of the high water mark. A deepwater port shall be considered a "new source" for purposes of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;

(11) "Governor" means the Governor of a State or the person designated by State law to exercise the powers granted to the Governor pursuant to this Act;

(12) "licensee" means a citizen of the United States holding a valid license for the ownership, construction, and operation of a deepwater port that was issued, transferred, or renewed pursuant to this Act;

(13) "marine environment" includes the coastal environment, waters of the contiguous zone, and waters of the high seas; the fish, wildlife, and other living resources of such waters; and the recreational and scenic values of such waters and resources;

(14) "oil" means petroleum, crude oil, and any substance refined from petroleum or crude oil;

(15) "person" includes an individual, a public or private corporation, a partnership or other association, or a government entity;

(16) "safety zone" means the safety zone established around a deepwater port as determined by the Secretary in accordance with section 10(d) of this Act;

(17) "Secretary" means the Secretary of Transportation;

(18) "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; and

(19) "vessel" means every description of watercraft or other artificial contrivance used as a means of transportation on or through the water.

LICENSE FOR THE OWNERSHIP, CONSTRUCTION, AND OPERATION OF A
DEEPWATER PORT

33 USC 1503.

SEC. 4. (a) No person may engage in the ownership, construction, or operation of a deepwater port except in accordance with a license

Post, p. 2147.

42 USC 1857
note.
33 USC 1251
note.

issued pursuant to this Act. No person may transport or otherwise transfer any oil between a deepwater port and the United States unless such port has been so licensed and the license is in force. A deepwater port, licensed pursuant to the provisions of this Act, may not be utilized—

(1) for the loading and unloading of commodities or materials (other than oil) transported from the United States, other than materials to be used in the construction, maintenance, or operation of the high seas oil port, to be used as ship supplies, including bunkering for vessels utilizing the high seas oil port,

(2) for the transshipment of commodities or materials, to the United States, other than oil,

(3) except in cases where the Secretary otherwise by rule provides, for the transshipment of oil, destined for locations outside the United States,

(b) The Secretary is authorized, upon application and in accordance with the provisions of this Act, to issue, transfer, amend, or renew a license for the ownership, construction, and operation of a deepwater port.

(c) The Secretary may issue a license in accordance with the provisions of this Act if—

(1) he determines that the applicant is financially responsible and will meet the requirements of section 18(1) of this Act;

(2) he determines that the applicant can and will comply with applicable laws, regulations, and license conditions;

(3) he determines that the construction and operation of the deepwater port will be in the national interest and consistent with national security and other national policy goals and objectives, including energy sufficiency and environmental quality;

(4) he determines that the deepwater port will not unreasonably interfere with international navigation or other reasonable uses of the high seas, as defined by treaty, convention, or customary international law;

(5) he determines, in accordance with the environmental review criteria established pursuant to section 6 of this Act, that the applicant has demonstrated that the deepwater port will be constructed and operated using best available technology, so as to prevent or minimize adverse impact on the marine environment;

(6) he has not been informed, within 45 days of the last public hearing on a proposed license for a designated application area, by the Administrator of the Environmental Protection Agency that the deepwater port will not conform with all applicable provisions of the Clean Air Act, as amended, the Federal Water Pollution Control Act, as amended, or the Marine Protection, Research and Sanctuaries Act, as amended;

(7) he has received the opinions of the Federal Trade Commission and the Attorney General, pursuant to section 7 of this Act, as to whether issuance of the license would adversely affect competition, restrain trade, promote monopolization, or otherwise create a situation in contravention of the antitrust laws;

(8) he has consulted with the Secretary of the Army, the Secretary of State, and the Secretary of Defense, to determine their

License, issuance.

42 USC 1857
note.

33 USC 1251
note.

33 USC 1401
note.

views on the adequacy of the application, and its effect on programs within their respective jurisdictions;

(9) the Governor of the adjacent coastal State or States, pursuant to section 9 of this Act, approves, or is presumed to approve, issuance of the license; and

(10) the adjacent coastal State to which the deepwater port is to be directly connected by pipeline has developed, or is making, at the time the application is submitted, reasonable progress, as determined in accordance with section 9(c) of this Act, toward developing, an approved coastal zone management program pursuant to the Coastal Zone Management Act of 1972.

16 USC 1451
note.

(d) If an application is made under this Act for a license to construct a deepwater port facility off the coast of a State, and a port of the State which will be directly connected by pipeline with such deepwater port, on the date of such application—

(1) has existing plans for construction of a deep draft channel and harbor; and

33 USC 403.

(2) has either (A) an active study by the Secretary of the Army relating to the construction of a deep draft channel and harbor, or (B) a pending application for a permit under section 10 of the Act of March 3, 1899 (30 Stat. 1121), for such construction; and

(3) applies to the Secretary for a determination under this section within 30 days of the date of the license application;

the Secretary shall not issue a license under this Act until he has examined and compared the economic, social, and environmental effects of the construction and operation of the deepwater port with the economic, social and environmental effects of the construction, expansion, deepening, and operation of such State port, and has determined which project best serves the national interest or that both developments are warranted. The Secretary's determination shall be discretionary and nonreviewable.

Conditions.

(e) (1) In issuing a license for the ownership, construction, and operation of a deepwater port, the Secretary shall prescribe any conditions which he deems necessary to carry out the provisions of this Act, or which are otherwise required by any Federal department or agency pursuant to the terms of this Act.

(2) No license shall be issued, transferred, or renewed under this Act unless the licensee or transferee first agrees in writing that (A) there will be no substantial change from the plans, operational systems, and methods, procedures, and safeguards set forth in his application, as approved, without prior approval in writing from the Secretary; and (B) he will comply with any condition the Secretary may prescribe in accordance with the provisions of this Act.

Removal re-
quirements.

(3) The Secretary shall establish such bonding requirements or other assurances as he deems necessary to assure that, upon the revocation or termination of a license, the licensee will remove all components of the deepwater port. In the case of components lying in the subsoil below the seabed, the Secretary is authorized to waive the removal requirements if he finds that such removal is not otherwise

Waiver.

necessary and that the remaining components do not constitute any threat to navigation or to the environment. At the request of the licensee, the Secretary, after consultation with the Secretary of the Interior, is authorized to waive the removal requirement as to any components which he determines may be utilized in connection with the transportation of oil, natural gas, or other minerals, pursuant to a lease granted under the provisions of the Outer Continental Shelf Lands Act (67 Stat. 462), after which waiver the utilization of such components shall be governed by the terms of the Outer Continental Shelf Lands Act.

Waiver.

43 USC 1331 note.

(f) Upon application, licenses issued under this Act may be transferred if the Secretary determines that such transfer is in the public interest and that the transferee meets the requirements of this Act and the prerequisites to issuance under subsection (e) of this section.

Transfer of licenses.

(g) Any citizen of the United States who otherwise qualifies under the terms of this Act shall be eligible to be issued a license for the ownership, construction, and operation of a deepwater port.

Eligibility.

(h) Licenses issued under this Act shall be for a term of not to exceed 20 years. Each licensee shall have a preferential right to renew his license subject to the requirements of subsection (e) of this section, upon such conditions and for such term, not to exceed an additional 10 years upon each renewal, as the Secretary determines to be reasonable and appropriate.

Term and renewal.

PROCEDURE

SEC. 5. (a) The Secretary shall, as soon as practicable after the date of enactment of this Act, and after consultation with other Federal agencies, issue regulations to carry out the purposes and provisions of this Act, in accordance with the provisions of section 553 of title 5, United States Code, without regard to subsection (a) thereof. Such regulations shall pertain to, but need not be limited to, application, issuance, transfer, renewal, suspension, and termination of licenses. Such regulations shall provide for full consultation and cooperation with all other interested Federal agencies and departments and with any potentially affected coastal State, and for consideration of the views of any interested members of the general public. The Secretary is further authorized, consistent with the purposes and provisions of this Act, to amend or rescind any such regulation.

Regulations. 33 USC 1594.

(b) The Secretary, in consultation with the Secretary of the Interior and the Administrator of the National Oceanic and Atmospheric Administration, shall, as soon as practicable after the date of enactment of this Act, prescribe regulations relating to those activities involved in site evaluation and preconstruction testing at potential deepwater port locations that may (1) adversely affect the environment; (2) interfere with authorized uses of the Outer Continental Shelf; or (3) pose a threat to human health and welfare. Such activity may thenceforth not be undertaken except in accordance with regulations prescribed pursuant to this subsection. Such regulations shall be consistent with the purposes of this Act.

(c) (1) Any person making an application under this Act shall submit detailed plans to the Secretary. Within 21 days after the receipt of an application, the Secretary shall determine whether the application appears to contain all of the information required by paragraph (2) hereof. If the Secretary determines that such information appears to be contained in the application, the Secretary shall, no later than 5 days after making such a determination, publish notice of the application and a summary of the plans in the Federal Register. If the Secretary determines that all of the required information does not appear

Plans, submitted to Secretary of Transportation.

Publication in Federal Register.

to be contained in the application, the Secretary shall notify the applicant and take no further action with respect to the application until such deficiencies have been remedied.

Application
contents.

(2) Each application shall include such financial, technical, and other information as the Secretary deems necessary or appropriate. Such information shall include, but need not be limited to—

(A) the name, address, citizenship, telephone number, and the ownership interest in the applicant, of each person having any ownership interest in the applicant of greater than 3 per centum;

(B) to the extent feasible, the name, address, citizenship, and telephone number of any person with whom the applicant has made, or proposes to make, a significant contract for the construction or operation of the deepwater port, and a copy of any such contract;

(C) the name, address, citizenship, and telephone number of each affiliate of the applicant and of any person required to be disclosed pursuant to subparagraphs (A) or (B) of this paragraph, together with a description of the manner in which such affiliate is associated with the applicant or any person required to be disclosed under subparagraph (A) or (B) of this paragraph;

(D) the proposed location and capacity of the deepwater port, including all components thereof;

(E) the type and design of all components of the deepwater port and any storage facilities associated with the deepwater port;

(F) with respect to construction in phases, a detailed description of each phase, including anticipated dates of completion for each of the specific components thereof;

(G) the location and capacity of existing and proposed storage facilities and pipelines which will store or transport oil transported through the deepwater port, to the extent known by the applicant or any person required to be disclosed pursuant to subparagraphs (A), (B), or (C) of this paragraph;

(H) with respect to any existing and proposed refineries which will receive oil transported through the deepwater port, the location and capacity of each such refinery and the anticipated volume of such oil to be refined by each such refinery, to the extent known by the applicant or any person required to be disclosed pursuant to subparagraphs (A), (B), or (C) of this paragraph;

(I) the financial and technical capabilities of the applicant to construct or operate the deepwater port;

(J) other qualifications of the applicant to hold a license under this Act;

(K) a description of procedures to be used in constructing, operating, and maintaining the deepwater port, including systems of oil spill prevention, containment, and cleanup; and

(L) such other information as may be required by the Secretary to determine the environmental impact of the proposed deepwater port.

Publication in
Federal Register.

(d) (1) At the time notice of an application is published pursuant to subsection (c) of this section, the Secretary shall publish a description in the Federal Register of an application area encompassing the deepwater port site proposed by such application and within which construction of the proposed deepwater port would eliminate, at the time such application was submitted, the need for any other deepwater port within that application area.

(2) As used in this section, "application area" means any reasonable geographical area within which a deepwater port may be constructed and operated. Such application area shall not exceed a circular zone, the center of which is the principal point of loading and unloading at the port, and the radius of which is the distance from such point to the high water mark of the nearest adjacent coastal State.

"Application area."

(3) The Secretary shall accompany such publication with a call for submission of any other applications for licenses for the ownership, construction, and operation of a deepwater port within the designated application area. Persons intending to file applications for such license shall submit a notice of intent to file an application with the Secretary not later than 60 days after the publication of notice pursuant to subsection (c) of this section and shall submit the completed application no later than 90 days after publication of such notice. The Secretary shall publish notice of any such application received in accordance with subsection (c) of this section. No application for a license for the ownership, construction, and operation of a deepwater port within the designated application area for which a notice of intent to file was received after such 60-day period, or which is received after such 90-day period has elapsed, shall be considered until the application pending with respect to such application area have been denied pursuant to this Act.

(e) (1) Not later than 30 days after the date of enactment of this Act, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, the Chief of Engineers of the United States Army Corps of Engineers, the Administrator of the National Oceanic and Atmospheric Administration, and the heads of any other Federal departments or agencies having expertise concerning, or jurisdiction over, any aspect of the construction or operation of deepwater ports shall transmit to the Secretary written comments as to their expertise or statutory responsibilities pursuant to this Act or any other Federal law.

Recommendations to Secretary of Transportation.

(2) An application filed with the Secretary shall constitute an application for all Federal authorizations required for ownership, construction, and operation of a deepwater port. At the time notice of any application is published pursuant to subsection (c) of this section, the Secretary shall forward a copy of such application to those Federal agencies and departments with jurisdiction over any aspect of such ownership, construction, or operation for comment, review, or recommendation as to conditions and for such other action as may be required by law. Each agency or department involved shall review the application and, based upon legal considerations within its area of responsibility, recommend to the Secretary the approval or disapproval of the application not later than 45 days after the last public hearing on a proposed license for a designated application area. In any case in which the agency or department recommends disapproval, it shall set forth in detail the manner in which the application does not comply with any law or regulation within its area of responsibility and shall notify the Secretary how the application may be amended so as to bring it into compliance with the law or regulation involved.

(f) For all timely applications covering a single application area, the Secretary, in cooperation with other involved Federal agencies and departments, shall, pursuant to section 102(2)(C) of the National Environmental Policy Act, prepare a single, detailed environmental impact statement, which shall fulfill the requirement of all Federal agencies in carrying out their responsibilities pursuant to this Act to prepare an environmental impact statement. In preparing such statement the Secretary shall consider the criteria established under section 6 of this Act.

Environmental impact statement.

42 USC 4332.

Public notice
and hearings.

(g) A license may be issued, transferred, or renewed only after public notice and public hearings in accordance with this subsection. At least one such public hearing shall be held in each adjacent coastal State. Any interested person may present relevant material at any hearing. After hearings in each adjacent coastal State are concluded, if the Secretary determines that there exists one or more specific and material factual issues which may be resolved by a formal evidentiary hearing, at least one adjudicatory hearing shall be held in accordance with the provisions of section 554 of title 5, United States Code, in the District of Columbia. The record developed in any such adjudicatory hearing shall be basis for the Secretary's decision to approve or deny a license. Hearings held pursuant to this subsection shall be consolidated insofar as practicable with hearings held by other agencies. All public hearings on all applications for any designated application area shall be consolidated and shall be concluded not later than 240 days after notice of the initial application has been published pursuant to section 5(c) of this Act.

Nonrefundable
application fee.

(h) (1) Each person applying for a license pursuant to this Act shall remit to the Secretary at the time the application is filed a nonrefundable application fee established by regulation by the Secretary. In addition, an applicant shall also reimburse the United States and the appropriate adjacent coastal State for any additional costs incurred in processing an application.

State fees.

(2) Notwithstanding any other provision of this Act, an adjacent coastal State may fix reasonable fees for the use of a deepwater port facility, and such State and any other State in which land-based facilities directly related to a deepwater port facility are located may set reasonable fees for the use of such land-based facilities. Fees may be fixed under authority of this paragraph as compensation for any economic cost attributable to the construction and operation of such deepwater port and such land-based facilities, which cannot be recovered under other authority of such State or political subdivision thereof, including, but not limited to, ad valorem taxes, and for environmental and administrative costs attributable to the construction and operation of such deepwater port and such land-based facilities. Fees under this paragraph shall not exceed such economic, environmental, and administrative costs of such State. Such fees shall be subject to the approval of the Secretary. As used in this paragraph, the term "land-based facilities directly related to a deepwater port facility" means the onshore tank farm and pipelines connecting such tank farm to the deepwater port facility.

Definition.

Fair market
rental value, ad-
vance payment.

(3) A licensee shall pay annually in advance the fair market rental value (as determined by the Secretary of the Interior) of the subsoil and seabed of the Outer Continental Shelf of the United States to be utilized by the deepwater port, including the fair market rental value of the right-of-way necessary for the pipeline segment of the port located on such subsoil and seabed.

Application ap-
proval.

(i) (1) The Secretary shall approve or deny any application for a designated application area submitted pursuant to this Act not later than 90 days after the last public hearing on a proposed license for that area.

Priorities.

(2) In the event more than one application is submitted for an application area, the Secretary, unless one of the proposed deepwater ports clearly best serves the national interest, shall issue a license according to the following order of priorities:

(A) to an adjacent coastal State (or combination of States), any political subdivision thereof, or agency or instrumentality, including a wholly owned corporation of any such government;

(B) to a person who is neither (i) engaged in producing, refining, or marketing oil, nor (ii) an affiliate of any person who is engaged in producing, refining, or marketing oil or an affiliate of any such affiliate;

(C) to any other person.

(3) In determining whether any one proposed deepwater port clearly best serves the national interest, the Secretary shall consider the following factors:

(A) the degree to which the proposed deepwater ports affect the environment, as determined under criteria established pursuant to section 6 of this Act;

(B) any significant differences between anticipated completion dates for the proposed deepwater ports; and

(C) any differences in costs of construction and operation of the proposed deepwater ports, to the extent that such differential may significantly affect the ultimate cost of oil to the consumer.

ENVIRONMENTAL REVIEW CRITERIA

SEC. 6. (a) The Secretary, in accordance with the recommendations of the Administrator of the Environmental Protection Agency and the Administrator of the National Oceanic and Atmospheric Administration and after consultation with any other Federal departments and agencies having jurisdiction over any aspect of the construction or operation of a deepwater port, shall establish, as soon as practicable after the date of enactment of this Act, environmental review criteria consistent with the National Environmental Policy Act. Such criteria shall be used to evaluate a deepwater port as proposed in an application, including—

33 USC 1505.

(1) the effect on the marine environment;

(2) the effect on oceanographic currents and wave patterns;

(3) the effect on alternate uses of the oceans and navigable waters, such as scientific study, fishing, and exploitation of other living and nonliving resources;

(4) the potential dangers to a deepwater port from waves, winds, weather, and geological conditions, and the steps which can be taken to protect against or minimize such dangers;

(5) effects of land-based developments related to deepwater port development;

(6) the effect on human health and welfare; and

(7) such other considerations as the Secretary deems necessary or appropriate.

42 USC 4321
note.

(b) The Secretary shall periodically review and, whenever necessary, revise in the same manner as originally developed, criteria established pursuant to subsection (a) of this section.

(c) Criteria established pursuant to this section shall be developed concurrently with the regulations in section 5(a) of this Act and in accordance with the provisions of that subsection.

ANTITRUST REVIEW

SEC. 7. (a) The Secretary shall not issue, transfer, or renew any license pursuant to section 4 of this Act unless he has received the opinions of the Attorney General of the United States and the Federal Trade Commission as to whether such action would adversely affect competition, restrain trade, promote monopolization, or otherwise create a situation in contravention of the antitrust laws. The issuance of a license under this Act shall not be admissible in any way as a

33 USC 1506.

defense to any civil or criminal action for violation of the antitrust laws of the United States, nor shall it in any way modify or abridge any private right of action under such laws.

Application, submittal to Attorney General and Federal Trade Commission.
Report, submittal to Secretary of Transportation.

(b) (1) Whenever any application for issuance, transfer, substantial change in, or renewal of any license is received, the Secretary shall transmit promptly to the Attorney General and the Federal Trade Commission a complete copy of such application. Within 45 days following the last public hearing, the Attorney General and the Federal Trade Commission shall each prepare and submit to the Secretary a report assessing the competitive effects which may result from issuance of the proposed license and the opinions described in subsection (a) of this section. If either the Attorney General or the Federal Trade Commission, or both, fails to file such views within such period, the Secretary shall proceed as if he had received such views.

(2) Nothing in this section shall be construed to bar the Attorney General or the Federal Trade Commission from challenging any anti-competitive situation involved in the ownership, construction, or operation of a deepwater port.

(3) Nothing contained in this section shall impair, amend, broaden, or modify any of the antitrust laws.

COMMON CARRIER STATUS

33 USC 1507.

SEC. 8. (a) For the purpose of chapter 39 of title 18, United States Code (18 U.S.C. 831-837), and part I of the Interstate Commerce Act (49 U.S.C. 1-27), a deepwater port and storage facilities serviced directly by such deepwater port shall be subject to regulation as a common carrier in accordance with the Interstate Commerce Act, as amended.

(b) A licensee under this Act shall accept, transport, or convey without discrimination all oil delivered to the deepwater port with respect to which its license is issued. Whenever the Secretary has reason to believe that a licensee is not operating a deepwater port, any storage facility or component thereof, in compliance with its obligations as a common carrier, the Secretary shall commence an appropriate proceeding before the Interstate Commerce Commission or he shall request the Attorney General to take appropriate steps to enforce such obligation and, where appropriate, to secure the imposition of appropriate sanctions. The Secretary may, in addition, proceed as provided in section 12 of this Act to suspend or terminate the license of any person so involved.

ADJACENT COASTAL STATES

33 USC 1508.

SEC. 9. (b) (1) The Secretary, in issuing notice of application pursuant to section 5 (c) of this Act, shall designate as an "adjacent coastal State" any coastal State which (A) would be directly connected by pipeline to a deepwater port as proposed in an application, or (B) would be located within 15 miles of any such proposed deepwater port.

(2) The Secretary shall, upon request of a State, and after having received the recommendations of the Administrator of the National Oceanic and Atmospheric Administration, designate such State as an "adjacent coastal State" if he determines that there is a risk of damage to the coastal environment of such State equal to or greater than the risk posed to a State directly connected by pipeline to the proposed deepwater port. This paragraph shall apply only with respect to requests made by a State not later than the 14th day after the date of

publication of notice of an application for a proposed deepwater port in the Federal Register in accordance with section 5(c) of this Act. The Secretary shall make the designation required by this paragraph not later than the 45th day after the date he receives such a request from a State.

(b) (1) Not later than 10 days after the designation of adjacent coastal States pursuant to this Act, the Secretary shall transmit a complete copy of the application to the Governor of each adjacent coastal State. The Secretary shall not issue a license without the approval of the Governor of each adjacent coastal State. If the Governor fails to transmit his approval or disapproval to the Secretary not later than 45 days after the last public hearing on applications for a particular application area, such approval shall be conclusively presumed. If the Governor notifies the Secretary that an application, which would otherwise be approved pursuant to this paragraph, is inconsistent with State programs relating to environmental protection, land and water use, and coastal zone management, the Secretary shall condition the license granted so as to make it consistent with such State programs.

(2) Any other interested State shall have the opportunity to make its views known to, and shall be given full consideration by, the Secretary regarding the location, construction, and operation of a deepwater port.

(c) The Secretary shall not issue a license unless the adjacent coastal State to which the deepwater port is to be directly connected by pipeline has developed, or is making, at the time the application is submitted, reasonable progress toward developing an approved coastal zone management program pursuant to the Coastal Zone Management Act of 1972 in the area to be directly and primarily impacted by land and water development in the coastal zone resulting from such deepwater port. For the purposes of this Act, a State shall be considered to be making reasonable progress if it is receiving a planning grant pursuant to section 305 of the Coastal Zone Management Act.

(d) The consent of Congress is given to two or more coastal States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, (1) to apply for a license for the ownership, construction, and operation of a deepwater port or for the transfer of such license, and (2) to establish such agencies, joint or otherwise, as are deemed necessary or appropriate for implementing and carrying out the provisions of any such agreement or compact. Such agreement or compact shall be binding and obligatory upon any State or party thereto without further approval by Congress.

MARINE ENVIRONMENTAL PROTECTION AND NAVIGATIONAL SAFETY

SEC. 10. (a) Subject to recognized principles of international law, the Secretary shall prescribe by regulation and enforce procedures with respect to any deepwater port, including, but not limited to, rules governing vessel movement, loading and unloading procedures, designation and marking of anchorage areas, maintenance, law enforcement, and the equipment, training, and maintenance required (A) to prevent pollution of the marine environment, (B) to clean up any pollutants which may be discharged, and (C) to otherwise prevent or minimize any adverse impact from the construction and operation of such deepwater port.

(b) The Secretary shall issue and enforce regulations with respect to lights and other warning devices, safety equipment, and other mat-

Application,
submital to Gov-
ernors of adjacent
coastal States.

16 USC 1451
note.

16 USC 1454.

33 USC 1509.

Regulations.

ters relating to the promotion of safety of life and property in any deepwater port and the waters adjacent thereto.

Marking of components.

(c) The Secretary shall mark, for the protection of navigation, any component of a deepwater port whenever the licensee fails to mark such component in accordance with applicable regulations. The licensee shall pay the cost of such marking.

Safety zones.

(d) (1) Subject to recognized principles of international law and after consultation with the Secretary of the Interior, the Secretary of Commerce, the Secretary of State, and the Secretary of Defense, the Secretary shall designate a zone of appropriate size around and including any deepwater port for the purpose of navigational safety. In such zone, no installations, structures, or uses will be permitted that are incompatible with the operation of the deepwater port. The Secretary shall by regulation define permitted activities within such zone. The Secretary shall, not later than 30 days after publication of notice pursuant to section 5(c) of this Act, designate such safety zone with respect to any proposed deepwater port.

(2) In addition to any other regulations, the Secretary is authorized, in accordance with this subsection, to establish a safety zone to be effective during the period of construction of a deepwater port and to issue rules and regulations relating thereto.

INTERNATIONAL AGREEMENTS

33 USC 1510.

SEC. 11. The Secretary of State, in consultation with the Secretary, shall seek effective international action and cooperation in support of the policy and purposes of this Act and may formulate, present, or support specific proposals in the United Nations and other competent international organizations for the development of appropriate international rules and regulations relative to the construction, ownership, and operation of deepwater ports, with particular regard for measures that assure protection of such facilities as well as the promotion of navigational safety in the vicinity thereof.

SUSPENSION OR TERMINATION OF LICENSES

33 USC 1511.

SEC. 12. (a) Whenever a licensee fails to comply with any applicable provision of this title or any applicable rule, regulation, restriction, or condition issued or imposed by the Secretary under the authority of this title, the Attorney General, at the request of the Secretary, may file an appropriate action in the United States district court nearest to the location of the proposed or actual deepwater port, as the case may be, or in the district in which the licensee resides or may be found, to—

(1) suspend the license; or

(2) if such failure is knowing and continues for a period of thirty days after the Secretary mails notification of such failure by registered letter to the licensee at his record post office address, revoke such license.

No proceeding under this subsection is necessary if the license, by its terms, provides for automatic suspension or termination upon the occurrence of a fixed or agreed upon condition, event, or time.

(b) If the Secretary determines that immediate suspension of the construction or operation of a deepwater port or any component thereof is necessary to protect public health or safety or to eliminate imminent and substantial danger to the environment, he shall order the licensee to cease or alter such construction or operation pending the completion of a judicial proceeding pursuant to subsection (a) of this section.

RECORDKEEPING AND INSPECTION

SEC. 13. (a) Each licensee shall establish and maintain such records, make such reports, and provide such information as the Secretary, after consultation with other interested Federal departments and agencies, shall by regulation prescribe to carry out the provision of this Act. Such regulations shall not amend, contradict or duplicate regulations established pursuant to part 1 of the Interstate Commerce Act or any other law. Each licensee shall submit such reports and shall make such records and information available as the Secretary may request.

33 USC 1512.

49 USC 1.

(b) All United States officials, including those officials responsible for the implementation and enforcement of United States laws applicable to a deepwater port, shall at all times be afforded reasonable access to a deepwater port licensed under this Act for the purpose of enforcing laws under their jurisdiction or otherwise carrying out their responsibilities. Each such official may inspect, at reasonable times, records, files, papers, processes, controls, and facilities and may test any feature of a deepwater port. Each inspection shall be conducted with reasonable promptness, and such licensee shall be notified of the results of such inspection.

PUBLIC ACCESS TO INFORMATION

SEC. 14. (a) Copies of any communication, document, report, or information transmitted between any official of the Federal Government and any person concerning a deepwater port (other than contracts referred to in section 5(c)(2)(B) of this Act) shall be made available to the public for inspection, and shall be available for the purpose of reproduction at a reasonable cost, to the public upon identifiable request, unless such information may not be publicly released under the terms of subsection (b) of this section. Except as provided in subsection (b) of this section, nothing contained in this section shall be construed to require the release of any information of the kind described in subsection (b) of section 552 of title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

33 USC 1513.

(b) The Secretary shall not disclose information obtained by him under this Act that concerns or relates to a trade secret, referred to in section 1905 of title 18, United States Code, or to a contract referred to in section 5(c)(2)(B) of this Act, except that such information may be disclosed, in a manner which is designed to maintain confidentiality—

Information disclosure, prohibition.

- (1) to other Federal and adjacent coastal State government departments and agencies for official use, upon request;
- (2) to any committee of Congress having jurisdiction over the subject matter to which the information relates, upon request;
- (3) to any person in any judicial proceeding, under a court order formulated to preserve such confidentiality without impairing the proceedings; and
- (4) to the public in order to protect health and safety, after notice and opportunity for comment in writing or for discussion in closed session within fifteen days by the party to which the information pertains (if the delay resulting from such notice and opportunity for comment would not be detrimental to the public health and safety).

REMEDIES

Penalties.
33 USC 1514.

SEC. 15. (a) Any person who willfully violates any provision of this Act or any rule, order, or regulation issued pursuant thereto shall on conviction be fined not more than \$25,000 for each day of violation or imprisoned for not more than 1 year, or both.

(b) (1) Whenever on the basis of any information available to him the Secretary finds that any person is in violation of any provision of this Act or any rule, regulation, order, license, or condition thereof, or other requirements under this Act, he shall issue an order requiring such person to comply with such provision or requirement, or he shall bring a civil action in accordance with paragraph (3) of this subsection.

(2) Any order issued under this subsection shall state with reasonable specificity the nature of the violation and a time for compliance, not to exceed thirty days, which the Secretary determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(3) Upon a request by the Secretary, the Attorney General shall commence a civil action for appropriate relief, including a permanent or temporary injunction or a civil penalty not to exceed \$25,000 per day of such violation, for any violation for which the Secretary is authorized to issue a compliance order under paragraph (1) of this subsection. Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation, require compliance, or impose such penalty.

(c) Upon a request by the Secretary, the Attorney General shall bring an action in an appropriate district court of the United States for equitable relief to redress a violation by any person of any provision of this Act, any regulation under this Act, or any license condition. The district courts of the United States shall have jurisdiction to grant such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, compensatory damages, and punitive damages.

Vessels. Liability.

(d) Any vessel, except a public vessel engaged in noncommercial activities, used in a violation of this Act or of any rule or regulation issued pursuant to this Act, shall be liable in rem for any civil penalty assessed or criminal fine imposed and may be proceeded against in any district court of the United States having jurisdiction thereof; but no vessel shall be liable unless it shall appear that one or more of the owners, or bareboat charterers, was at the time of the violation, a consenting party or privy to such violation.

CITIZEN CIVIL ACTION

33 USC 1515.

SEC. 16. (a) Except as provided in subsection (b) of this section, any person may commence a civil action for equitable relief on his own behalf, whenever such action constitutes a case or controversy—

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any provision of this Act or any condition of a license issued pursuant to this Act; or

(2) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under this Act which is not discretionary with the Secretary. Any action brought against

the Secretary under this paragraph shall be brought in the district court for the District of Columbia or the district of the appropriate adjacent coastal State.

In suits brought under this Act, the district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any provision of this Act or any condition of a license issued pursuant to this Act, or to order the Secretary to perform such act or duty, as the case may be.

Jurisdiction.

(b) No civil action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to 60 days after the plaintiff has given notice of the violation (i) to the Secretary and (ii) to any alleged violator; or

(B) if the Secretary or the Attorney General has commenced and is diligently prosecuting a civil or criminal action with respect to such matters in a court of the United States, but in any such action any person may intervene as a matter of right; or

(2) under subsection (a)(2) of this section prior to 60 days after the plaintiff has given notice of such action to the Secretary.

Notice under this subsection shall be given in such a manner as the Secretary shall prescribe by regulation.

(c) In any action under this section, the Secretary or the Attorney General, if not a party, may intervene as a matter of right.

(d) The Court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines that such an award is appropriate.

(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement or to seek any other relief.

JUDICIAL REVIEW

SEC. 17. Any person suffering legal wrong, or who is adversely affected or aggrieved by the Secretary's decision to issue, transfer, modify, renew, suspend, or revoke a license may, not later than 60 days after any such decision is made, seek judicial review of such decision in the United States Court of Appeals for the circuit within which the nearest adjacent coastal State is located. A person shall be deemed to be aggrieved by the Secretary's decision within the meaning of this Act if he—

33 USC 1516.

(A) has participated in the administrative proceedings before the Secretary (or if he did not so participate, he can show that his failure to do so was caused by the Secretary's failure to provide the required notice); and

(B) is adversely affected by the Secretary's action.

LIABILITY

SEC. 18. (a)(1) The discharge of oil into the marine environment from a vessel within any safety zone, from a vessel which has received oil from another vessel at a deepwater port, or from a deepwater port is prohibited.

Oil discharge,
prohibition.
33 USC 1517.

(2) The owner or operator of a vessel or the licensee of a deepwater port from which oil is discharged in violation of this subsection shall be assessed a civil penalty of not more than \$10,000 for each violation.

Penalty.

Notice and
hearing.

No penalty shall be assessed unless the owner or operator or the licensee has been given notice and opportunity for a hearing on such charge. Each violation is a separate offense. The Secretary of the Treasury shall withhold, at the request of the Secretary, the clearance required by section 4197 of the Revised Statutes of the United States, as amended (46 U.S.C. 91), of any vessel the owner or operator of which is subject to the foregoing penalty. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to the Secretary.

Oil discharge,
notification.

Penalty.

(b) Any individual in charge of a vessel or a deepwater port shall notify the Secretary as soon as he has knowledge of a discharge of oil. Any such individual who fails to notify the Secretary immediately of such discharge shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than 1 year, or both. Notification received pursuant to this subsection, or information obtained by the use of such notification, shall not be used against any such individual in any criminal case, except a prosecution for perjury or for giving a false statement.

Oil removal.

(c) (1) Whenever any oil is discharged from a vessel within any safety zone, from a vessel which has received oil from another vessel at a deepwater port, or from a deepwater port, the Secretary shall remove or arrange for the removal of such oil as soon as possible, unless he determines such removal will be done properly and expeditiously by the licensee of the deepwater port or the owner or operator of the vessel from which the discharge occurs.

33 USC 1321.

(2) Removal of oil and actions to minimize damage from oil discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan for removal of oil and hazardous substances established pursuant to section 311 (c) (2) of the Federal Water Pollution Control Act, as amended.

(3) Whenever the Secretary acts to remove a discharge of oil pursuant to this subsection, he is authorized to draw upon money available in the Deepwater Port Liability Fund established pursuant to subsection (f) of this section. Such money shall be used to pay promptly for all cleanup costs incurred by the Secretary in removing or in minimizing damage caused by such oil discharge.

Liability.

(d) Notwithstanding any other provision of law, except as provided in subsection (g) of this section, the owner and operator of a vessel shall be jointly and severally liable, without regard to fault, for cleanup costs and for damages that result from a discharge of oil from such vessel within any safety zone, or from a vessel which has received oil from another vessel at a deepwater port, except when such vessel is moored at a deepwater port. Such liability shall not exceed \$150 per gross ton or \$20,000,000, whichever is lesser, except that if it can be shown that such discharge was the result of gross negligence or willful misconduct within the privity and knowledge of the owner or operator, such owner and operator shall be jointly and severally liable for the full amount of all cleanup costs and damages.

(e) Notwithstanding any other provision of law, except as provided in subsection (g) of this section, the licensee of a deepwater port shall be liable, without regard to fault, for cleanup costs and damages that result from a discharge of oil from such deepwater port or from a vessel moored at such deepwater port. Such liability shall not exceed \$50,000,000, except that if it can be shown that such damage was the result of gross negligence or willful misconduct within the privity and knowledge of the licensee, such licensee shall be liable for the full amount of all cleanup costs and damages.

(f) (1) There is established a Deepwater Port Liability Fund (hereinafter referred to as the "Fund") as a nonprofit corporate entity which may sue or be sued in its own name. The Fund shall be administered by the Secretary.

Deepwater Port
Liability Fund.
Establishment.

(2) The Fund shall be liable, without regard to fault, for all cleanup costs and all damages in excess of those actually compensated pursuant to subsections (d) and (e) of this section.

(3) Each licensee shall collect from the owner of any oil loaded or unloaded at the deepwater port operated by such licensee, at the time of loading or unloading, a fee of 2 cents per barrel, except that (A) bunker or fuel oil for the use of any vessel, and (B) oil which was transported through the trans-Alaska pipeline, shall not be subject to such collection. Such collections shall be delivered to the Fund at such times and in such manner as shall be prescribed by the Secretary. Such collections shall cease after the amount of money in the Fund has reached \$100,000,000, unless there are adjudicated claims against the Fund yet to be satisfied. Collection shall be resumed when the Fund is reduced below \$100,000,000. Whenever the money in the Fund is less than the claims for cleanup costs and damages for which it is liable under this section, the Fund shall borrow the balance required to pay such claims from the United States Treasury at an interest rate determined by the Secretary of the Treasury. Costs of administration shall be paid from the Fund only after appropriation in an appropriation bill. All sums not needed for administration and the satisfaction of claims shall be prudently invested in income-producing securities issued by the United States and approved by the Secretary of the Treasury. Income from such securities shall be applied to the principal of the Fund.

Fees.

(g) Liability shall not be imposed under subsection (d) or (e) of this section if the owner or operator of a vessel or the licensee can show that the discharge was caused solely by (1) an act of war, or (2) negligence on the part of the Federal Government in establishing and maintaining aids to navigation. In addition, liability with respect to damages claimed by a damaged party shall not be imposed under subsection (d), (e), or (f) of this section if the owner or operator of a vessel, the licensee, or the Fund can show that such damage was caused solely by the negligence of such party.

Liability.

(h) (1) In any case where liability is imposed pursuant to subsection (d) of this section, if the discharge was the result of the negligence of the licensee, the owner or operator of a vessel held liable shall be subrogated to the rights of any person entitled to recovery against such licensee.

(2) In any case where liability is imposed pursuant to subsection (e) of this section, if the discharge was the result of the unseaworthiness of a vessel or the negligence of the owner or operator of such vessel, the licensee shall be subrogated to the rights of any person entitled to recovery against such owner or operator.

(3) Payment of compensation for any damages pursuant to subsection (f) (2) of this section shall be subject to the Fund acquiring by subrogation all rights of the claimant to recover for such damages from any other person.

(4) The liabilities established in this section shall in no way affect or limit any rights which the licensee, the owner, or operator of a vessel, or the Fund may have against any third party whose act may in any way have caused or contributed to a discharge of oil.

(5) In any case where the owner or operator of a vessel or the licensee of a deepwater port from which oil is discharged acts to remove such oil in accordance with subsection (c) (1) of this section, such owner or

operator or such licensee shall be entitled to recover from the Fund the reasonable cleanup cost incurred in such removal if he can show that such discharge was caused solely by (A) an act of war or (B) negligence on the part of the Federal Government in establishing and maintaining aids to navigation.

Recovery of claims.

(i) (1) The Attorney General may act on behalf of any group of damaged citizens he determines would be more adequately represented as a class in recovery of claims under this section. Sums recovered shall be distributed to the members of such group. If, within 90 days after a discharge of oil in violation of this section has occurred, the Attorney General fails to act in accordance with this paragraph, to sue on behalf of a group of persons who may be entitled to compensation pursuant to this section for damages caused by such discharge, any member of such group may maintain a class action to recover such damages on behalf of such group. Failure of the Attorney General to act in accordance with this subsection shall have no bearing on any class action maintained in accordance with this paragraph.

Notice, publication in Federal Register and newspapers.

(2) In any case where the number of members in the class exceeds 1,000, publishing notice of the action in the Federal Register and in local newspapers serving the areas in which the damaged parties reside shall be deemed to fulfill the requirement for public notice established by rule 23(c) (2) of the Federal Rules of Civil Procedure.

28 USC app.

(3) The Secretary may act on behalf of the public as trustee of the natural resources of the marine environment to recover for damages to such resources in accordance with this section. Sums recovered shall be applied to the restoration and rehabilitation of such natural resources by the appropriate agencies of Federal or State government.

Cleanup costs and damages, claims.

(j) (1) The Secretary shall establish by regulation procedures for the filing and payment of claims for cleanup costs and damages pursuant to this Act.

(2) No claims for payment of cleanup costs or damages which are filed with the Secretary more than 3 years after the date of the discharge giving rise to such claims shall be considered.

Appeals.

(3) Appeals from any final determination of the Secretary pursuant to this section shall be filed not later than 30 days after such determination in the United States Court of Appeals of the circuit within which the nearest adjacent coastal State is located.

(k) (1) This section shall not be interpreted to preempt the field of liability or to preclude any State from imposing additional requirements or liability for any discharge of oil from a deepwater port or a vessel within any safety zone.

(2) Any person who receives compensation for damages pursuant to this section shall be precluded from recovering compensation for the same damages pursuant to any other State or Federal law. Any person who receives compensation for damages pursuant to any other Federal or State law shall be precluded from receiving compensation for the same damages as provided in this section.

(1) the Secretary shall require that any owner or operator of a vessel using any deepwater port, or any licensee of a deepwater port, shall carry insurance or give evidence of other financial responsibility in an amount sufficient to meet the liabilities imposed by this section.

Definitions.

(m) As used in this section the term—

(1) "cleanup costs" means all actual costs, including but not limited to costs of the Federal Government, of any State or local government, of other nations or of their contractors or subcontractors incurred in the (A) removing or attempting to remove, or (B) taking other measures to reduce or mitigate damages from, any oil discharged into the marine environment in violation of subsection (a) (1) of this section;

(2) "damages" means all damages (except cleanup costs) suffered by any person, or involving real or personal property, the natural resources of the marine environment, or the coastal environment of any nation, including damages claimed without regard to ownership of any affected lands, structures, fish, wildlife, or biotic or natural resources;

(3) "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping into the marine environment of quantities of oil determined to be harmful pursuant to regulations issued by the Administrator of the Environmental Protection Agency; and

(4) "owner or operator" means any person owning, operating, or chartering by demise, a vessel.

(n)(1) The Attorney General, in cooperation with the Secretary, the Secretary of State, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, the Council on Environmental Quality, and the Administrative Conference of the United States, is authorized and directed to study methods and procedures for implementing a uniform law providing liability for cleanup costs and damages from oil spills from Outer Continental Shelf operations, deepwater ports, vessels, and other ocean-related sources. The study shall give particular attention to methods of adjudicating and settling claims as rapidly, economically, and equitably as possible.

Study.

(2) The Attorney General shall report the results of his study together with any legislative recommendations to the Congress within 6 months after the date of enactment of this Act.

Report to Congress.

RELATIONSHIP TO OTHER LAWS

SEC. 19. (a) (1) The Constitution, laws, and treaties of the United States shall apply to a deepwater port licensed under this Act and to activities connected, associated, or potentially interfering with the use or operation of any such port, in the same manner as if such port were an area of exclusive Federal jurisdiction located within a State. Nothing in this Act shall be construed to relieve, exempt, or immunize any person from any other requirement imposed by Federal law, regulation, or treaty. Deepwater ports licensed under this Act do not possess the status of islands and have no territorial seas of their own.

33 USC 1518.
USC prec.
title 1.

(2) Except as otherwise provided by this Act, nothing in this Act shall in any way alter the responsibilities and authorities of a State or the United States within the territorial seas of the United States.

(b) The law of the nearest adjacent coastal State, now in effect or hereafter adopted, amended, or repealed, is declared to be the law of the United States, and shall apply to any deepwater port licensed pursuant to this Act, to the extent applicable and not inconsistent with any provision or regulation under this Act or other Federal laws and regulations now in effect or hereafter adopted, amended, or repealed. All such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. For purposes of this subsection, the nearest adjacent coastal State shall be that State whose seaward boundaries, if extended beyond 3 miles, would encompass the site of the deepwater port.

(c) Except in a situation involving force majeure, a licensee of a deepwater port shall not permit a vessel, registered in or flying the flag of a foreign state, to call at, or otherwise utilize a deepwater port licensed under this Act unless (1) the foreign state involved, by specific agreement with the United States, has agreed to recognize the jurisdiction of the United States over the vessel and its personnel, in

accordance with the provisions of this Act, while the vessel is located within the safety zone, and (2) the vessel owner or operator has designated an agent in the United States for receipt of service of process in the event of any claim or legal proceeding resulting from activities of the vessel or its personnel while located within such a safety zone.

Customs laws,
nonapplicability.

(d) The customs laws administered by the Secretary of the Treasury shall not apply to any deepwater port licensed under this Act, but all foreign articles to be used in the construction of any such deepwater port, including any component thereof, shall first be made subject to all applicable duties and taxes which would be imposed upon or by reason of their importation if they were imported for consumption in the United States. Duties and taxes shall be paid thereon in accordance with laws applicable to merchandise imported into the customs territory of the United States.

United States
district courts,
original jurisdic-
tion.

(e) The United States district courts shall have original jurisdiction of cases and controversies arising out of or in connection with the construction and operation of deepwater ports, and proceedings with respect to any such case or controversy may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the adjacent coastal State nearest the place where the cause of action arose.

43 USC 1333.

(f) Section 4(a)(2) of the Act of August 7, 1953 (67 Stat. 462) is amended by deleting the words "as of the effective date of this Act" in the first sentence thereof and inserting in lieu thereof the words "now in effect or hereafter adopted, amended, or repealed".

ANNUAL REPORT BY SECRETARY TO CONGRESS

33 USC 1519.

SEC. 20. Within 6 months after the end of each fiscal year, the Secretary shall submit to the President of the Senate and the Speaker of the House of Representatives (1) a report on the administration of the Deepwater Port Act during such fiscal year, including all deepwater port development activities; (2) a summary of management, supervision, and enforcement activities; and (3) recommendations to the Congress for such additional legislative authority as may be necessary to improve the management and safety of deepwater port development and for resolution of jurisdictional conflicts or ambiguities.

Recommendations
to Congress.

PIPELINE SAFETY AND OPERATION

33 USC 1520.

SEC. 21. (a) The Secretary, in cooperation with the Secretary of the Interior, shall establish and enforce such standards and regulations as may be necessary to assure the safe construction and operation of oil pipelines on the Outer Continental Shelf.

Report to Con-
gress.

(b) The Secretary, in cooperation with the Secretary of the Interior, is authorized and directed to report to the Congress within 60 days after the date of enactment of this Act on appropriations and staffing needed to monitor pipelines on Federal lands and the Outer Continental Shelf so as to assure that they meet all applicable standards for construction, operation, and maintenance.

Review.

(c) The Secretary, in cooperation with the Secretary of the Interior, is authorized and directed to review all laws and regulations relating to the construction, operation, and maintenance of pipelines on Federal lands and the Outer Continental Shelf and to report to Congress thereon within 6 months after the date of enactment of this Act on administrative changes needed and recommendations for new legislation.

Report to Con-
gress.

NEGOTIATIONS WITH CANADA AND MEXICO

SEC. 22. The President of the United States is authorized and requested to enter into negotiations with the Governments of Canada and Mexico to determine: 33 USC 1521.

(1) the need for intergovernmental understandings, agreements, or treaties to protect the interests of the people of Canada, Mexico, and the United States and of any party or parties involved with the construction or operation of deepwater ports; and

(2) the desirability of undertaking joint studies and investigations designed to insure protection of the environment and to eliminate any legal and regulatory uncertainty, to assure that the interests of the people of Canada, Mexico, and the United States are adequately met.

The President shall report to the Congress the actions taken, the progress achieved, the areas of disagreement, and the matters about which more information is needed, together with his recommendations for further action. Report to Congress.

PUBLIC LAW 93-153

SEC. 23. Nothing in this Act shall be construed to amend, restrict, or otherwise limit the application of section 28(u) of the Mineral Leasing Act of 1920, as amended by Public Law 93-153. 33 USC 1522.
30 USC 185.

GENERAL PROCEDURES

SEC. 24. The Secretary or his delegate shall have the authority to issue and enforce orders during proceedings brought under this Act. Such authority shall include the authority to issue subpoenas, administer oaths, compel the attendance and testimony of witnesses and the production of books, papers, documents, and other evidence, to take depositions before any designated individual competent to administer oaths, and to examine witnesses. 33 USC 1523.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 25. There is authorized to be appropriated for administration of this Act not to exceed \$2,500,000 for the fiscal year ending June 30, 1975, not to exceed \$2,500,000 for the fiscal year ending June 30, 1976, and not to exceed \$2,500,000 for the fiscal year ending June 30, 1977. 33 USC 1524.

Approved January 3, 1975.

C. SOCIAL CONDITIONS

**Tariff Act of 1930,
Part V--Enforcement Provisions***

* 19 U.S.C. §1581-1624 (1976).

June 17, 1930.
[H. R. 3567.]
[Public No. 361.]

CHAP. 497.—An Act To provide revenue, to regulate commerce with foreign countries, to encourage the industries of the United States, to protect American labor, and for other purposes.

Tariff Act of 1930.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I.
DUTIABLE LIST.

Duties levied on imports from abroad.

Vol. 42, p. 808.
U. S. C., Supp. IV,
p. 214.
Philippine and Virgin Islands, American Samoa, and Guam accepted.

SCHEDULE 1.
Chemicals, oils, and paints.
Acids and acid anhydrides.

TITLE I—DUTIABLE LIST

SECTION 1. That on and after the day following the passage of this Act, except as otherwise specially provided for in this Act, there shall be levied, collected, and paid upon—all articles when imported from any foreign country into the United States or into any of its possessions (except the Philippine Islands, the Virgin Islands, American Samoa, and the island of Guam) the rates of duty which are prescribed by the schedules and paragraphs of the dutiable list of this title, namely:

SCHEDULE 1—CHEMICALS, OILS, AND PAINTS

PARAGRAPH 1. Acids and acid anhydrides: Acetic acid containing by weight not more than 65 per centum of acetic acid, 1½ cents per pound; containing by weight more than 65 per centum, 2 cents per pound; acetic anhydride, 3½ cents per pound; boric acid, 1 cent per pound; chloroacetic acid, 5 cents per pound; citric acid, 17 cents per pound; formic acid, 3 cents per pound; lactic acid, containing by weight of lactic acid less than 30 per centum, 2 cents per pound; 30 per centum or more and less than 55 per centum, 4 cents per pound; and 55 per centum or more, 9 cents per pound: *Provided*, That any lactic-acid anhydride present shall be determined as lactic acid and included as such: *And provided further*, That the duty on lactic acid shall not be less than 25 per centum ad valorem; tannic acid, tannin, and extracts of nutgalls, containing by weight of tannic acid less than 50 per centum, 5 cents per pound; 50 per centum or more and not medicinal, 11 cents per pound; 50 per centum or more and medicinal, 18 cents per pound; tartaric acid, 8 cents per pound; arsenic acid, 3 cents per pound; gallic acid, 6 cents per pound; oleic acid or red oil, 20 per centum ad valorem; oxalic acid, 6 cents per pound; phosphoric acid, 2 cents per pound; pyrogallie acid, 12 cents per pound; carbon dioxide, weighing with immediate containers and carton, one pound or less per carton, 1 cent per pound on contents, immediate containers, and carton; and all other acids and acid anhydrides not specially provided for, 25 per centum ad valorem.

Acetaldehyde, etc.

PAR. 2. Acetaldehyde, aldol or acetalol, aldehyde ammonia, butyraldehyde, crotonaldehyde, paracetaldehyde; ethylene chlorhydrin, propylene chlorhydrin, butylene chlorhydrin; ethylene dichloride, propylene dichloride, butylene dichloride; ethylene oxide, propylene oxide, butylene oxide; ethylene glycol, propylene glycol, butylene glycol, and all other glycols or dihydric alcohols; mono-ethanolamine, diethanolamine, triethanolamine, ethylene diamine, and all other hydroxy alkyl amines and alkylene diamines; allyl alcohol, crotonyl alcohol, vinyl alcohol, and all other olefin or unsaturated alcohols; homologues and polymers of all the foregoing; ethers, esters, salts and nitrogenous compounds of any of the foregoing, whether polymerized or unpolymersed; and mixtures in chief value of any one or more of the foregoing; all the foregoing not specially provided for, 8 cents per pound and 30 per centum ad valorem.

Acetone.

PAR. 3. Acetone and ethyl methyl ketone, and their homologues, and acetone oil, 20 per centum ad valorem.

SEC. 564. LIENS.

Whenever a collector of customs shall be notified in writing of the existence of a lien for freight, charges, or contribution in general average upon any imported merchandise sent to the appraiser's store for examination, entered for warehousing or taken possession of by him, he shall refuse to permit delivery thereof from public store or bonded warehouse until proof shall be produced that the said lien has been satisfied or discharged. The rights of the United States shall not be prejudiced or affected by the filing of such lien, nor shall the United States or its officers be liable for losses or damages consequent upon such refusal to permit delivery. If merchandise, regarding which such notice of lien has been filed, shall be forfeited or abandoned and sold, the freight, charges, or contribution in general average due thereon shall be paid from the proceeds of such sale in the same manner as other lawful charges and expenses are paid therefrom.

ADMINISTRATIVE PROVISIONS.

Lien.
Satisfaction of, for charges, etc., on imports before suit.

Government rights not prejudiced thereby.

Disposal of forfeited goods.

SEC. 565. CARTAGE.

The cartage of merchandise entered for warehouse shall be done by cartmen to be appointed and licensed by the collector of customs and who shall give a bond, in a penal sum to be fixed by such collector, for the protection of the Government against any loss of, or damage to, such merchandise while being so carted. The cartage of merchandise designated for examination at the appraiser's stores and of merchandise taken into custody by the collector as unclaimed shall be performed by such persons as may be designated, under contract or otherwise, by the Secretary of the Treasury, and under such regulations for the protection of the owners thereof and of the revenue as the Secretary of the Treasury shall prescribe.

Cartage.

Goods to be taken to warehouses by licensed cartmen.

For examination at appraiser's stores, etc.

Part V—Enforcement Provisions**SEC. 581. BOARDING VESSELS.**

Officers of the customs or of the Coast Guard, and agents or other persons authorized by the Secretary of the Treasury, or appointed for that purpose in writing by a collector may at any time go on board of any vessel or vehicle at any place in the United States or within four leagues of the coast of the United States, without as well as within their respective districts, to examine the manifest and to inspect, search, and examine the vessel or vehicle, and every part thereof, and any person, trunk, or package on board, and to this end to hail and stop such vessel or vehicle, if under way, and use all necessary force to compel compliance, and if it shall appear that any breach or violation of the laws of the United States has been committed, whereby or in consequence of which such vessel or vehicle, or the merchandise, or any part thereof, on board of or imported by such vessel or vehicle is liable to forfeiture, it shall be the duty of such officer to make seizure of the same, and to arrest, or, in case of escape or attempted escape, to pursue and arrest any person engaged in such breach or violation.

Enforcement Provisions.**Boarding vessels**

Treasury officials may board vessels within four leagues of coast.

Powers and duties of.

Seizure, etc., for violations of law.

Officers of the Department of Commerce and other persons authorized by such department may go on board of any vessel at any place in the United States or within four leagues of the coast of the United States and hail, stop, and board such vessels in the enforcement of the navigation laws and arrest or, in case of escape or attempted escape, pursue and arrest any person engaged in the breach or violation of the navigation laws.

Commerce officials may board vessels to enforce navigation laws.

ADMINISTRATIVE PRO-
VISIONS.
Search of persons,
etc.
Regulations to be
prescribed for
Female inspectors.

SEC. 582. SEARCH OF PERSONS AND BAGGAGE—REGULATIONS.

The Secretary of the Treasury may prescribe regulations for the search of persons and baggage and he is authorized to employ female inspectors for the examination and search of persons of their own sex; and all persons coming into the United States from foreign countries shall be liable to detention and search by authorized officers or agents of the Government under such regulations.

Manifests.

SEC. 583. CERTIFICATION OF MANIFEST.

Boarding officer to
inspect, and certify.

The master of every vessel and the person in charge of every vehicle bound to a port or place in the United States shall deliver to the officer of the customs or Coast Guard who shall first demand it of him, the original and one copy of the manifest of such vessel or vehicle, and such officer shall certify on the back of the original manifest to the inspection thereof and return the same to the master or other person in charge.

Penalties.

SEC. 584. FALSITY OR LACK OF MANIFEST—PENALTIES.

For not producing
manifest.

Any master of any vessel and any person in charge of any vehicle bound to the United States who does not produce the manifest to the officer demanding the same shall be liable to a penalty of \$500, and if any merchandise, including sea stores, is found on board of or after having been unladen from such vessel or vehicle which is not included or described in said manifest or does not agree therewith, the master of such vessel or the person in charge of such vehicle or the owner of such vessel or vehicle shall be liable to a penalty equal to the value of the merchandise so found or unladen, and any such merchandise belonging or consigned to the master or other officer or to any of the crew of such vessel, or to the owner or person in charge of such vehicle, shall be subject to forfeiture, and if any merchandise described in such manifest is not found on board the vessel or vehicle the master or other person in charge or the owner of such vessel or vehicle shall be subject to a penalty of \$500: *Provided*, That if the collector shall be satisfied that the manifest was lost or mislaid without intentional fraud, or was defaced by accident, or is incorrect by reason of clerical error or other mistake and that no part of the merchandise not found on board was unshipped or discharged except as specified in the report of the master, said penalties shall not be incurred.

If articles found not
on manifest.

If article on manifest
not found.

Proviso.
Exceptions from om-
nality, etc.

Smoking opium.

Liability of masters,
etc., if found on vessel.
Enforcement by lien.

If any of such merchandise so found consists of smoking opium or opium prepared for smoking, the master of such vessel or the person in charge of such vehicle or the owner of such vessel or vehicle shall be liable to a penalty of \$25 for each ounce thereof so found. Such penalty shall, notwithstanding the proviso in section 594 of this Act (relating to the immunity of vessels or vehicles used as common carriers), constitute a lien upon such vessel which may be enforced by a libel in rem; except that the master or owner of a vessel used by any person as a common carrier in the transaction of business as such common carrier shall not be liable to such penalty and the vessel shall not be held subject to the lien, if it appears to the satisfaction of the court that neither the master nor any of the officers (including licensed and unlicensed officers and petty officers) nor the owner of the vessel knew, and could not, by the exercise of the highest degree of care and diligence, have known, that such smoking opium or opium prepared for smoking was on board. Clearance of any such vessel may be withheld until such penalty is paid or until a bond, satisfactory to the collector, is given for the payment thereof. The provisions of this paragraph

Post, p. 731.

Exception, if master
or owner had no knowl-
edge of opium on board.

Clearance withheld.

shall not prevent the forfeiture of any such vessel or vehicle under any other provision of law.

ADMINISTRATIVE PROVISIONS.
Forfeitures.

SEC. 585. DEPARTURE BEFORE REPORT OR ENTRY.

Departures.

If any vessel or vehicle from a foreign port or place arrives within the limits of any collection district and departs or attempts to depart, except from stress of weather or other necessity, without making a report or entry under the provisions of this Act, or if any merchandise is unladen therefrom before such report or entry, the master of such vessel shall be liable to a penalty of \$5,000, and the person in charge of such vehicle shall be liable to a penalty of \$500, and any such vessel or vehicle shall be subject to forfeiture, and any customs or Coast Guard officer may cause such vessel or vehicle to be arrested and brought back to the most convenient port of the United States.

Penalty for leaving, etc., before report or entry.

Arrest of vessel or vehicle.

SEC. 586. UNLAWFUL UNLADING—EXCEPTION.

Unlading.

The master of any vessel from a foreign port or place who allows any merchandise (including sea stores) to be unladen from such vessel at any time after its arrival within four leagues of the coast of the United States and before such vessel has come to the proper place for the discharge of such merchandise, and before he has received a permit to unlade, shall be liable to a penalty equal to twice the value of the merchandise but not less than \$1,000, and such vessel and the merchandise shall be subject to seizure and forfeiture: *Provided*, That whenever any part of the cargo or stores of a vessel has been unladen or transhipped because of accident, stress of weather, or other necessity, the master of such vessel shall, as soon as possible thereafter, notify the collector of the district within which such unlading or transshipment has occurred, or the collector within the district at which such vessel shall first arrive thereafter, and shall furnish proof that such unlading or transshipment was made necessary by accident, stress of weather, or other unavoidable cause, and if the collector is satisfied that the unlading or transshipment was in fact due to accident, stress of weather, or other necessity the penalties above described shall not be incurred.

Penalty for, before receiving permit.

Proviso.
Except in case of casualty, if reported at first port of arrival, etc.

SEC. 587. UNLAWFUL TRANSSHIPMENT.

Unlawful transshipment.

If any merchandise (including sea stores) unladen in violation of the provisions of section 586 of this Act is transhipped to or placed in or received on any other vessel, the master of the vessel on which such merchandise is placed, and any person aiding or assisting therein, shall be liable to a penalty equal to twice the value of the merchandise, but not less than \$1,000, and such vessel and such merchandise shall be liable to seizure and forfeiture.

Penalty for receiving goods unlawfully transhipped.

SEC. 588. TRANSPORTATION BETWEEN AMERICAN PORTS VIA FOREIGN PORTS.

Transportation between American ports through foreign ports.

If any merchandise is laden at any port or place in the United States upon any vessel belonging wholly or in part to a subject of a foreign country, and is taken thence to a foreign port or place to be reladen and reshipped to any other port in the United States, either by the same or by another vessel, foreign or American, with intent to evade the provisions relating to the transportation of merchandise from one port or place of the United States to another port or place of the United States in a vessel belonging wholly or in part to a subject of any foreign power, the merchandise shall, on its arrival at such last-named port or place, be seized and forfeited to the United

Goods shipped on foreign vessels to foreign countries and loaded there for another American port to be seized, etc.

ADDITIONAL PROVISIONS.—
Tonnage duty on vessel. States, and the vessel shall pay a tonnage duty of 50 cents per net ton.

Unlawful relanding. SEC. 589. UNLAWFUL RELANDING.

Penalty for relanding without entry, goods withdrawn for exportation.

If any merchandise entered or withdrawn for exportation without payment of the duties thereon, or with intent to obtain a drawback of the duties paid, or of any other allowances given by law on the exportation thereof, is relanded at any place in the United States without entry therefor having been made, the same shall be considered and treated as having been imported into the United States contrary to law, and all persons concerned therein and such merchandise shall be liable to the same penalties as are prescribed by section 593 of this Act.

False drawback claim. SEC. 590. FALSE DRAWBACK CLAIM.

Punishment for filing false claims for drawback, etc.

If any person shall knowingly and willfully file any false or fraudulent entry or claim for the payment of drawback, allowance, or refund of duties upon the exportation of merchandise, or shall knowingly or willfully make or file any false affidavit, abstract, record, certificate, or other document, with a view to securing the payment to himself or others of any drawback, allowance, or refund of duties, on the exportation of merchandise, greater than that legally due thereon, such person shall be guilty of a felony, and upon conviction thereof shall be punished by a fine of not more than \$5,000, or by imprisonment for not more than two years, or both, and the merchandise or the value thereof to which such false entry or claim, affidavit, abstract, record, certificate, or other document relates shall be subject to forfeiture.

Forfeiture of goods.

Fraud.

SEC. 591. FRAUD—PERSONAL PENALTIES.

Punishment for making false entries, etc. Illegal acts specified.

If any consignor, seller, owner, importer, consignee, agent, or other person or persons enters or introduces, or attempts to enter or introduce, into the commerce of the United States any imported merchandise by means of any fraudulent or false invoice, declaration, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or appliance whatsoever, or makes any false statement in any declaration under the provisions of section 485 of this Act (relating to declaration on entry) without reasonable cause to believe the truth of such statement, or aids or procures the making of any such false statement as to any matter material thereto without reasonable cause to believe the truth of such statement, or is guilty of any willful act or omission by means whereof the United States shall or may be deprived of the lawful duties, or any portion thereof, accruing upon the merchandise, or any portion thereof, embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement, or affected by such act or omission, such person or persons shall upon conviction be fined for each offense a sum not exceeding \$5,000, or be imprisoned for a time not exceeding two years, or both, in the discretion of the court: *Provided*, That nothing in this section shall be construed to relieve imported merchandise from forfeiture by reason of such false statement or for any cause elsewhere provided by law.

Act, p. 724.

Penalty. Imports not released from forfeiture.

SEC. 592. SAME—PENALTY AGAINST GOODS.

Forfeiture of goods fraudulently entered, etc.

If any consignor, seller, owner, importer, consignee, agent, or other person or persons enters or introduces, or attempts to enter or

introduce, into the commerce of the United States any imported merchandise by means of any fraudulent or false invoice, declaration, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or appliance whatsoever, or makes any false statement in any declaration under the provisions of section 485 of this Act (relating to declaration on entry) without reasonable cause to believe the truth of such statement, or aids or procures the making of any such false statement as to any matter material thereto without reasonable cause to believe the truth of such statement, or is guilty of any willful act or omission by means whereof the United States is or may be deprived of the lawful duties or any portion thereof accruing upon the merchandise or any portion thereof, embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement, or affected by such act or omission, such merchandise, or the value thereof, to be recovered from such person or persons, shall be subject to forfeiture, which forfeiture shall only apply to the whole of the merchandise or the value thereof in the case or package containing the particular article or articles of merchandise to which such fraud or false paper or statement relates. The arrival within the territorial limits of the United States of any merchandise consigned for sale and remaining the property of the shipper or consignee, and the acceptance of a false or fraudulent invoice thereof by the consignee or the agent of the consignee, or the existence of any other facts constituting an attempted fraud, shall be deemed, for the purposes of this section, to be an attempt to enter such merchandise notwithstanding no actual entry has been made or offered.

ADMINISTRATIVE PROVISIONS.

Illegal acts specified.

ART. D. 72E.

Applicable only to goods affected.

Consignments with false invoices, not actually entered, liable.

SEC. 593. SMUGGLING AND CLANDESTINE IMPORTATIONS.

(a) FRAUD ON REVENUE.—If any person knowingly and willfully, with intent to defraud the revenue of the United States, smuggles, or clandestinely introduces into the United States any merchandise which should have been invoiced, or makes out or passes, or attempts to pass, through the customhouse any false, forged, or fraudulent invoice, or other document or paper, every such person, his, her, or their aiders and abettors, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding \$5,000, or imprisoned for any term of time not exceeding two years, or both, at the discretion of the court.

(b) IMPORTATION CONTRARY TO LAW.—If any person fraudulently or knowingly imports or brings into the United States, or assists in so doing, any merchandise contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported or brought into the United States contrary to law, such merchandise shall be forfeited and the offender shall be fined in any sum not exceeding \$5,000 nor less than \$50, or be imprisoned for any time not exceeding two years, or both.

(c) PRESUMPTIONS.—Whenever, on trial for a violation of this section, the defendant is shown to have or to have had possession of such goods, such possession shall be deemed evidence sufficient to authorize conviction, unless the defendant shall explain the possession to the satisfaction of the jury.

SEC. 594. LIBEL OF VESSELS AND VEHICLES.

Whenever a vessel or vehicle, or the owner or master, conductor, driver, or other person in charge thereof, has become subject to a penalty for violation of the customs-revenue laws of the United States, such vessel or vehicle shall be held for the payment of such

Smuggling.

Punishment for smuggling in sec. ductible goods.

Importations contrary to law.

Punishment for receiving, etc., illegal imports.

Possession prima facie evidence of violations.

Vessels and vehicles.

Seizure and libel of, or violation customs laws.

ADMINISTRATIVE PROVISIONS.
Penalty.
Restrictions as to common carriers.

penalty and may be seized and proceeded against summarily by libel to recover the same: *Provided*, That no vessel or vehicle used by any person as a common carrier in the transaction of business as such common carrier shall be so held or subject to seizure or forfeiture under the customs laws, unless it shall appear that the owner or master of such vessel or the conductor, driver, or other person in charge of such vehicle was at the time of the alleged illegal act a consenting party or privy thereto.

Searches and seizures.

SEC. 595. SEARCHES AND SEIZURES.

Search warrants.
Application for issue of, on suspicion of illegal imports in a house or store.

(a) **WARRANT.**—If any collector of customs or other officer or person authorized to make searches and seizures shall have cause to suspect the presence in any dwelling house, store, or other building or place of any merchandise upon which the duties have not been paid, or which has been otherwise brought into the United States contrary to law, he may make application, under oath, to any justice of the peace, to any municipal, county, State, or Federal judge, or to any United States commissioner, and shall thereupon be entitled to a warrant to enter such dwelling house in the daytime only, or such store or other place at night or by day, and to search for and seize such merchandise: *Provided*, That if any such house, store, or other building, or place in which such merchandise shall be found, is upon or within ten feet of the boundary line between the United States and a foreign country, such portion thereof as is within the United States may forthwith be taken down or removed.

Penalty.
Buildings on boundary line.

(b) **ENTRY UPON PROPERTY OF OTHERS.**—Any person authorized by this Act to make searches and seizures, or any person assisting him or acting under his directions, may, if deemed necessary by him or them, enter into or upon or pass through the lands, inclosures, and buildings, other than the dwelling house, of any person whomsoever, in the discharge of his official duties.

Entry through and upon property of others, etc.

Buildings on boundary.

SEC. 596. BUILDINGS ON BOUNDARY.

Punishment for receiving, etc., imports unlawfully li.

Any person who receives or deposits any merchandise in any building upon the boundary line between the United States and any foreign country, or carries any merchandise through the same, or aids therein, in violation of law, shall be punishable by a fine of not more than \$5,000, or by imprisonment for not more than two years, or both.

Goods in warehouse.

SEC. 597. FRAUDULENT TREATMENT OF GOODS IN WAREHOUSE.

Punishment for fraudulently concealing, removing, etc.

If any merchandise is fraudulently concealed in, removed from, or repacked in any bonded warehouse, or if any marks or numbers placed upon packages deposited in such a warehouse be fraudulently altered, defaced, or obliterated, such merchandise and packages shall be subject to forfeiture, and all persons convicted of the fraudulent concealment, repacking, or removal of such merchandise, or of altering, defacing, or obliterating such marks and numbers thereon, and all persons aiding and abetting therein shall be liable to the same penalties as are imposed by section 593 of this Act.

Art. D. 76L

Seals, etc.

SEC. 598. OFFENSES RELATING TO SEALS—UNLAWFUL REMOVAL OF GOODS FROM CUSTOMS CUSTODY.

Punishment for affixing false customs seals, etc.

If any unauthorized person affixes or attaches or in any way willfully assists or encourages the affixing or attaching of a customs seal or other fastening to any vessel or vehicle, or of any seal, fastening, or mark purporting to be a customs seal, fastening, or mark; or if any unauthorized person willfully or maliciously removes, breaks, injures, or defaces any customs seal or other fastening placed upon

Removing, injuring, etc.

any vessel, vehicle, warehouse, or package containing merchandise or baggage in bond or in customs custody, or willfully aids, abets, or encourages any other person to remove, break, injure, or deface such seal, fastening, or mark; or if any person maliciously enters any bonded warehouse or any vessel or vehicle laden with or containing bonded merchandise with intent unlawfully to remove or cause to be removed therefrom any merchandise or baggage therein, or unlawfully removes or causes to be removed any merchandise or baggage in such vessel, vehicle, or bonded warehouse or otherwise in customs custody or control, or aids or assists therein; or if any person receives or transports any merchandise or baggage unlawfully removed from any such vessel, vehicle, or warehouse, knowing the same to have been unlawfully removed, he shall be guilty of a felony and liable to the same penalties as are imposed by section 593 of this Act.

ADMINISTRATIVE PROVISIONS.

Unlawfully removing goods or baggage from warehouse, vessel, or vehicle.

Receiving unlawful removals.

Act, p. 781.

SEC. 598. OFFICERS NOT TO BE INTERESTED IN VESSELS OR CARGO.

No person employed under the authority of the United States, in the collection of duties on imports or tonnage, shall own, either in whole or in part, any vessel, or act as agent, attorney, or consignee for the owner or owners of any vessel, or of any cargo or lading on board the same; nor shall any such person import, or be concerned directly or indirectly in the importation of, any merchandise for sale into the United States. Every person who violates this section shall be liable to a penalty of \$500.

Interest in vessels and cargo.

Ownership of, by customs officials prohibited.

Penalty.

SEC. 599. GRATUITIES.

Any officer or employee of the United States who, except in payment of the duties or exactions fixed by law, solicits, demands, exacts, or receives from any person, directly or indirectly, any gratuity, money, or thing of value, for any services performed under the customs laws, or in consideration of any official act to be performed by him, or of the omission of performance of any such act, in connection with or pertaining to the importation, entry, inspection or examination, or appraisement of merchandise or baggage, shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine not exceeding \$5,000, or by imprisonment for not more than two years, or both, and evidence, satisfactory to the court in which the trial is had, of such soliciting, demanding, exacting, or receiving shall be prima facie evidence that the same was contrary to law.

Gratuities.

Punishment for official receiving for services.

Pen. p. 1029.

Prima facie evidence.

SEC. 601. BRIBERY.

Any person who gives, or offers to give, or promises to give, any money or thing of value, directly or indirectly, to any officer or employee of the United States in consideration of or for any act or omission contrary to law in connection with or pertaining to the importation, appraisement, entry, examination, or inspection of merchandise or baggage, or of the liquidation of the entry thereof, or by threats or demands or promises of any character attempts to improperly influence or control any such officer or employee of the United States as to the performance of his official duties, shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine not exceeding \$5,000 or by imprisonment for a term not exceeding two years, or both, and evidence of such giving, offering or promising to give, or attempting to influence or control, satisfactory to the court in which such trial is had, shall be prima facie evidence that the same was contrary to law.

Bribery.

Punishment for bribery, etc., customs officials.

Pen. p. 1029.

Prima facie evidence.

ADMINISTRATIVE PROVISIONS.

Seizures, etc.
Officials making, to report, and turn over to collector, vessel, vehicle, goods, etc.

SEC. 602. SEIZURE—REPORT TO COLLECTOR.

It shall be the duty of any officer, agent, or other person authorized by law to make seizures of merchandise or baggage subject to seizure for violation of the customs laws, to report every such seizure immediately to the collector for the district in which such violation occurred, and to turn over and deliver to such collector any vessel, vehicle, merchandise, or baggage seized by him, and to report immediately to such collector every violation of the customs laws.

Collector's reports.

SEC. 603. SAME—COLLECTOR'S REPORTS.

To be made to Solicitor of the Treasury and to district attorney.

It shall be the duty of the collector whenever a seizure of merchandise has been made for a violation of the customs laws to report the same to the Solicitor of the Treasury, and promptly also to report any such seizure or violation of the customs laws to the United States attorney for the district in which such violation has occurred, or in which such seizure was made, including in such report a statement of all the facts and circumstances of the case within his knowledge, with the names of the witnesses, and citation of the statute or statutes believed to have been violated, and on which reliance may be had for forfeiture or conviction.

Statement to accompany.

Prosecution.

SEC. 604. SAME—PROSECUTION.

District attorney to enter necessary proceedings without delay, for recovery, etc.

It shall be the duty of every United States district attorney immediately to inquire into the facts of cases reported to him by collectors and the laws applicable thereto, and if it appears probable that any fine, penalty, or forfeiture has been incurred by reason of such violation, for the recovery of which the institution of proceedings in the United States district court is necessary, forthwith to cause the proper proceedings to be commenced and prosecuted, without delay, for the recovery of such fine, penalty, or forfeiture in such case provided, unless, upon inquiry and examination, such district attorney decides that such proceedings can not probably be sustained or that the ends of public justice do not require that they should be instituted or prosecuted, in which case he shall report the facts to the Secretary of the Treasury for his direction in the premises.

Report if proceedings not recommended.

Custody.

SEC. 605. SAME—CUSTODY.

Collector to retain, of seized vessels, vehicles, and goods, until disposed of.

All vessels, vehicles, merchandise, and baggage seized under the provisions of the customs laws, or laws relating to the navigation, registering, enrolling or licensing, or entry or clearance, of vessels, unless otherwise provided by law, shall be placed and remain in the custody of the collector for the district in which the seizure was made to await disposition according to law.

Seized vessels.

SEC. 606. SAME—APPRAISEMENT.

Appraiser to determine value of.

The collector shall require the appraiser to determine the domestic value, at the time and place of appraisement, of any vessel, vehicle, merchandise, or baggage seized under the customs laws.

Seizures.

SEC. 607. SAME—VALUE \$1,000 OR LESS.

Publication of sales, etc., if not valued over \$1,000.

If such value of such vessel, vehicle, merchandise, or baggage returned by the appraiser, does not exceed \$1,000, the collector shall cause a notice of the seizure of such articles and the intention to forfeit and sell the same to be published for at least three successive weeks in such manner as the Secretary of the Treasury may direct. For the purposes of this section and sections 610 and 612 of this Act merchandise the importation of which is prohibited shall be held not to exceed \$1,000 in value.

Value of prohibited imports.

SEC. 608. SAME—CLAIMS—JUDICIAL CONDEMNATION.

Any person claiming such vessel, vehicle, merchandise, or baggage may at any time within twenty days from the date of the first publication of the notice of seizure file with the collector a claim stating his interest therein. Upon the filing of such claim, and the giving of a bond to the United States in the penal sum of \$250, with sureties to be approved by the collector, conditioned that in case of condemnation of the articles so claimed the obligor shall pay all the costs and expenses of the proceedings to obtain such condemnation, the collector shall transmit such claim and bond, with a duplicate list and description of the articles seized, to the United States attorney for the district in which seizure was made, who shall proceed to a condemnation of the merchandise or other property in the manner prescribed by law.

ADMINISTRATIVE PROCEEDINGS.
Seized property.
Claims for interest in, may be filed.

Condemnation proceedings on filing bond.

SEC. 609. SAME—SUMMARY FORFEITURE AND SALE.

If no such claim is filed or bond given within the twenty days hereinbefore specified, the collector shall declare the vessel, vehicle, merchandise, or baggage forfeited, and shall sell the same at public auction in the same manner as merchandise abandoned to the United States is sold, and shall deposit the proceeds of sale, after deducting the actual expenses of seizure, publication and sale, in the Treasury of the United States.

Forfeiture and sale, if no claim filed.

Proceeds

SEC. 610. SAME—VALUE MORE THAN \$1,000.

If the value returned by the appraiser of any vessel, vehicle, merchandise, or baggage so seized is greater than \$1,000, the collector shall transmit a report of the case, with the names of available witnesses, to the United States attorney for the district in which the seizure was made for the institution of the proper proceedings for the condemnation of such property.

Report of, to district attorney if valued over \$1,000.

SEC. 611. SAME—SALE UNLAWFUL.

If the sale of any vessel, vehicle, merchandise, or baggage forfeited under the customs laws in the district in which seizure thereof was made be prohibited by the laws of the State in which such district is located, or if a sale may be made more advantageously in any other district, the Secretary of the Treasury may order such vessel, vehicle, merchandise, or baggage to be transferred for sale in any customs district in which the sale thereof may be permitted. Upon the request of the Secretary of the Treasury, any court may, in proceedings for the forfeiture of any vessel, vehicle, merchandise, or baggage under the customs laws, provide in its decree of forfeiture that the vessel, vehicle, merchandise, or baggage, so forfeited, shall be delivered to the Secretary of the Treasury for disposition in accordance with the provisions of this section. If the Secretary of the Treasury is satisfied that the proceeds of any sale will not be sufficient to pay the costs thereof, he may order a destruction by the customs officers: *Provided*, That any merchandise forfeited under the customs laws, the sale or use of which is prohibited under any law of the United States or of any State, may, in the discretion of the Secretary of the Treasury, be destroyed, or remanufactured into an article that is not prohibited, the resulting article to be disposed of to the profit of the United States only.

Sale in another district, if laws of place where seized prohibit it.

Forfeited vessels, etc., may be delivered to Secretary of Treasury on request.

Destruction, etc.
Proviso.
Manufacture of prohibited articles, authorized.

SEC. 612. SAME—SUMMARY SALE.

Whenever it appears to the collector that any vessel, vehicle, merchandise, or baggage seized under the customs laws is liable to

Summary sale.
Authorized of perishables of articles valued not over \$1,000.

ADMINISTRATIVE PROVISIONS.	perish or to waste or to be greatly reduced in value by keeping, or that the expense of keeping the same is disproportionate to the value thereof, and the value of such vessel, vehicle, merchandise, or baggage as determined by the appraiser under section 606 of this Act, does not exceed \$1,000, and such vessel, vehicle, merchandise, or baggage has not been delivered under bond, the collector shall, within twenty-four hours after the receipt by him of the appraiser's return proceed forthwith to advertise and sell the same at auction under regulations to be prescribed by the Secretary of the Treasury. If such value of such vessel, vehicle, merchandise, or baggage exceeds \$1,000 the collector shall forthwith transmit the appraiser's return and his report of the seizure to the United States district attorney, who shall petition the court to order an immediate sale of such vessel, vehicle, merchandise, or baggage, and if the ends of justice require it the court shall order such immediate sale, the proceeds thereof to be deposited with the court to await the final determination of the condemnation proceedings. Whether such sale be made by the collector or by order of the court, the proceeds thereof shall be held subject to claims of parties in interest to the same extent as the vessel, vehicle, merchandise, or baggage so sold would have been subject to such claim.
Petition for order of sale, if goods of greater value.	
Proceeds.	
Subject to claims of interested parties.	
Forfeited property.	SEC. 613. DISPOSITION OF PROCEEDS OF FORFEITED PROPERTY.
Application allowed for remission of forfeiture, or restoration of property.	Any person claiming any vessel, vehicle, merchandise, or baggage, or any interest therein, which has been forfeited and sold under the provisions of this Act, may at any time within three months after the date of sale apply to the Secretary of the Treasury if the forfeiture and sale was under the customs laws, or to the Secretary of Commerce if the forfeiture and sale was under the navigation laws, for a remission of the forfeiture and restoration of the proceeds of such sale, or such part thereof as may be claimed by him. Upon the production of satisfactory proof that the applicant did not know of the seizure prior to the declaration or condemnation of forfeiture, and was in such circumstances as prevented him from knowing of the same, and that such forfeiture was incurred without any willful negligence or intention to defraud on the part of the applicant, the Secretary of the Treasury or the Secretary of Commerce may order the proceeds of the sale, or any part thereof, restored to the applicant, after deducting the cost of seizure and of sale, the duties, if any, accruing on the merchandise or baggage, and any sum due on a lien for freight, charges, or contribution in general average that may have been filed. If no application for such remission or restoration is made within three months after such sale, or if the application be denied by the Secretary of the Treasury or the Secretary of Commerce, the proceeds of sale shall be disposed of as follows:
Order to issue if no intent to defraud, etc., proved.	
Disposal of proceeds if no application for same in three months.	
Payment of expenses of proceedings.	(1) For the payment of all proper expenses of the proceedings of forfeiture and sale, including expenses of seizure, maintaining the custody of the property, advertising and sale, and if condemned by a decree of a district court and a bond for such costs was not given, the costs as taxed by the court;
Satisfaction of liens.	(2) For the satisfaction of liens for freight, charges, and contributions in general average, notice of which has been filed with the collector according to law;
Payment of accrued duties.	(3) For the payment of the duties accruing on such merchandise or baggage, if the same is subject to duty; and
Residue as customs or navigation fine.	(4) The residue shall be deposited with the Treasurer of the United States as a customs or navigation fine.

SEC. 614. RELEASE OF SEIZED PROPERTY.

If any person claiming an interest in any vessel, vehicle, merchandise, or baggage seized under the provisions of this Act offers to pay the value of such vessel, vehicle, merchandise, or baggage, as determined under section 606 of this Act, and it appears that such person has in fact a substantial interest therein, the collector may, subject to the approval of the Secretary of the Treasury if under the customs laws, or the Secretary of Commerce if under the navigation laws, accept such offer and release the vessel, vehicle, merchandise, or baggage seized upon the payment of such value thereof, which shall be distributed in the order provided in section 613 of this Act.

ADMINISTRATIVE PROVISIONS.
Released property.
Release of, to party claiming interest therein, upon paying full value thereof.
Act, p. 754.

Distribution.
Act, p. 753.

SEC. 615. BURDEN OF PROOF IN FORFEITURE PROCEEDINGS.

In all suits or actions brought for the forfeiture of any vessel, vehicle, merchandise, or baggage seized under the provisions of any law relating to the collection of duties on imports or tonnage, where the property is claimed by any person, the burden of proof shall lie upon such claimant; and in all suits or actions brought for the recovery of the value of any vessel, vehicle, merchandise, or baggage, because of violation of any such law, the burden of proof shall be upon the defendant: *Provided*, That probable cause shall be first shown for the institution of such suit or action, to be judged of by the court.

Forfeiture proceedings.

Proof of ownership of seized property required.

In suits to recover value thereof.

Præsumptions.
Probable cause.

SEC. 616. COMPROMISE OF GOVERNMENT CLAIMS PROHIBITED—EXCEPTION.

It shall not be lawful for any officer of the United States to compromise or abate any claim of the United States arising under the customs laws for any fine, penalty, or forfeiture, and any such officer who compromises or abates any such claim or attempts to make such compromise or abatement, or in any manner relieves or attempts to relieve any person, vessel, vehicle, merchandise, or baggage from any such fine, penalty, or forfeiture shall be guilty of a felony and upon conviction thereof shall be punished by a fine of not more than \$5,000 or by imprisonment for a term of not exceeding two years: *Provided*, That the Secretary of the Treasury shall have power to remit or mitigate any such fine, penalty, or forfeiture, or to compromise the same in the manner provided by law.

Government claims.

Compromise of, by officials, unlawful.

Punishment for.

Præsumptions.
Authority of Secretary to mitigate, etc.

SEC. 617. COMPROMISE OF GOVERNMENT CLAIMS BY SECRETARY OF TREASURY.

Upon a report by a collector, district attorney, or any special attorney or customs agent, having charge of any claim arising under the customs laws, showing the facts upon which such claim is based, the probabilities of a recovery and the terms upon which the same may be compromised, the Secretary of the Treasury is hereby authorized to compromise such claim, if such action shall be recommended by the Solicitor of the Treasury.

Compromises.

Allowed by Secretary in report of customs officers, etc.

Action of Solicitor of the Treasury.

SEC. 618. REMISSION OR MITIGATION OF PENALTIES.

Whenever any person interested in any vessel, vehicle, merchandise, or baggage seized under the provisions of this Act, or who has incurred, or is alleged to have incurred, any fine or penalty thereunder, files with the Secretary of the Treasury if under the customs laws, and with the Secretary of Commerce if under the navigation laws, before the sale of such vessel, vehicle, merchandise, or baggage a petition for the remission or mitigation of such fine, pen-

Penalties.

Application for remission of, made, before sale of property.

ADMINISTRATIVE PRO-
VISIONS.
Authority of Secre-
tary to grant.

Testimony to be
taken.

Proviso.
Informers compensa-
tion protected.

Informers.

Compensation al-
lowed, any person not
an official for reporting
found on customs, etc.

Maximum allowance
payable from customs
revenue.

Bail bond recoveries
included.

United States offi-
cers.

Receive Dept. of
money, etc., by, s
felony.
Punishment for.

Recovery of, by per-
son paying.

Customs penalties,
etc.

Time limit for suits.

Proviso.
Absence from United
States not included.

alty, or forfeiture, the Secretary of the Treasury, or the Secretary of Commerce, if he finds that such fine, penalty, or forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine, penalty, or forfeiture, may remit or mitigate the same upon such terms and conditions as he deems reasonable and just, or order discontinuance of any prosecution relating thereto. In order to enable him to ascertain the facts, the Secretary of the Treasury may issue a commission to any customs agent, collector, judge of the United States Customs Court, or United States commissioner, to take testimony upon such petition: *Provided*, That nothing in this section shall be construed to deprive any person of an award of compensation made before the filing of such petition.

SEC. 619. AWARD OF COMPENSATION TO INFORMERS.

Any person not an officer of the United States who detects and seizes any vessel, vehicle, merchandise, or baggage subject to seizure and forfeiture under the customs laws, and who reports the same to an officer of the customs, or who furnishes to a district attorney, to the Secretary of the Treasury, or to any customs officer original information concerning any fraud upon the customs revenue, or a violation of the customs laws perpetrated or contemplated, which detection and seizure or information leads to a recovery of any duties withheld, or of any fine, penalty, or forfeiture incurred, may be awarded and paid by the Secretary of the Treasury a compensation of 25 per centum of the net amount recovered, but not to exceed \$50,000 in any case, which shall be paid out of any appropriations available for the collection of the revenue from customs. For the purposes of this section, an amount recovered under a bail bond shall be deemed a recovery of a fine incurred.

SEC. 620. SAME—UNITED STATES OFFICERS.

Any officer of the United States who directly or indirectly receives, accepts, or contracts for any portion of the money which may accrue to any person making such detection and seizure, or furnishing such information, shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than two years, or both, and shall be thereafter ineligible to any office of honor, trust, or emolument. Any such person who pays to any such officer, or to any person for the use of such officer, any portion of such money, or anything of value for or because of such money, shall have a right of action against such officer, or his legal representatives, or against such person, or his legal representatives, and shall be entitled to recover the money so paid or the thing of value so given.

SEC. 621. LIMITATION OF ACTIONS.

No suit or action to recover any pecuniary penalty or forfeiture of property accruing under the customs laws shall be instituted unless such suit or action is commenced within five years after the time when such penalty or forfeiture accrued: *Provided*, That the time of the absence from the United States of the person subject to such penalty or forfeiture, or of any concealment or absence of the property, shall not be reckoned within this period of limitation.

SEC. 622. FOREIGN LANDING CERTIFICATES.

The Secretary of the Treasury may by regulations require the production of landing certificates in respect of merchandise exported from the United States, or in respect of residue cargo, in cases in which he deems it necessary for the protection of the revenue.

ADMINISTRATIVE PROVISIONS.
Foreign landing certificates.
Production of, may be required of exports, or residue cargo.

SEC. 623. SECURITY.

(a) BONDS.—In any case in which bond or other security is not specifically required by law, the Secretary of the Treasury may by regulations require, or authorize collectors of customs to require, such bonds or other security as he, or they, may deem necessary for the protection of the revenue and to assure compliance with the customs laws and regulations. Except as otherwise specifically provided by law, whenever a bond is required by law or regulations, the Secretary of the Treasury may by regulations prescribe the conditions and form of such bond, provide for the approval of the sureties thereon (without regard to any general provision of law), fix the amount or penalty thereof, whether for the payment of liquidated damages or of a penal sum, and authorize the cancellation of any such bond, in the event of a breach of any condition thereof, upon the payment of such lesser amount as he may deem sufficient. No condition in any such bond shall be held invalid on the ground that such condition is not specified in the law authorizing or requiring the taking of such bond. Whenever a bond is required by the customs laws or regulations, the Secretary of the Treasury may authorize the execution of a single bond the conditions of which shall extend to and cover similar cases or importations over a period of time, not to exceed one year, or such longer period as the Secretary of the Treasury may fix to meet the circumstances of any particular case.

(b) DEPOSITS IN LIEU OF BONDS.—The Secretary of the Treasury is authorized to permit the deposit of money or obligations of the United States, in such amount and upon such conditions as he may by regulations prescribe, in lieu of any bond required by the provisions of the customs laws, or by regulations promulgated thereunder.

Security.
Collectors may require, necessary protection of revenue, etc.

Regulations as to form, amounts, etc.

Acceptance of yearly bond to cover similar importations.

Federal securities accepted in lieu of bonds.

SEC. 624. GENERAL REGULATIONS.

In addition to the specific powers conferred by this Act, the Secretary of the Treasury is authorized to make such rules and regulations as may be necessary to carry out the provisions of this Act.

General regulations.

Anti-Smuggling Act of 1935*

* 19 U.S.C. §1701 (1976).

CHAPTER 5—SMUGGLING

- Sec.
1701. Customs-enforcement area.
 (a) Establishment; extent and duration; enforcement of laws applicable to waters adjacent to customs waters.
 (b) Boarding vessels; arrest and seizure; compliance with treaty provisions; authority of Secretary of Commerce unaffected.
1702. Repealed.
1703. Seizure and forfeiture of vessels.
 (a) Vessels subject to seizure and forfeiture.
 (b) "Vessels of the United States" defined.
 (c) Acts constituting prima facie evidence vessel engaged in smuggling.
1704. Refusal or revocation of registry, enrollment, license or number on evidence that vessel engaging in smuggling; appeal; immunity from liability.
1705. Destruction of forfeited vessel or vehicle.
1706. Importation in vessels under thirty tons and aircraft; licenses; labels as prima facie evidence of foreign origin of merchandise.
1707. Certificate for importation of alcoholic liquors in small vessels; bond where liquor destined to foreign port; penalty for failure to carry; loss, defaced, or incorrect certificate as relieving from penalty.
1708. Lading vessel in foreign port with liquor for importation.
 (a) Allowing lading without certificate for importation; liability of master.
 (b) Procuring lading with intent to defraud revenue laws; liability of citizen, master, and members of crew of United States vessel.
1709. Definitions.
1710. Separability of provisions.
1711. Citation of chapter.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1581, 1587 of this title.

§ 1701. Customs-enforcement area

- (a) Establishment; extent and duration; enforcement of laws applicable to waters adjacent to customs waters

Whenever the President finds and declares that at any place or within any area on the high seas adjacent to but outside customs waters any vessel or vessels hover or are being kept off the coast of the United States and that, by virtue of the presence of any such vessel or vessels at such place or within such area, the unlawful introduction or removal into or from the United States of any merchandise or person is being or may be occasioned, promoted, or threatened, the place or area so found and declared shall constitute a customs-enforcement area for the purposes of this Act. Only such waters on the high seas shall be within a customs-enforcement area as the President finds and declares are in such proximity to such vessel or vessels that such unlawful introduction or removal of merchandise or persons may be carried on by or to or from such vessel or vessels. No customs-enforcement area shall include any waters more than one hundred nautical miles from the place or immediate area where the President declares such

vessel or vessels are hovering or are being kept and, notwithstanding the foregoing provision, shall not include any waters more than fifty nautical miles outwards from the outer limit of customs waters. Whenever the President finds that, within any customs-enforcement area, the circumstances no longer exist which gave rise to the declaration of such area as a customs-enforcement area, he shall so declare, and thereafter, and until a further finding and declaration is made under this subsection with respect to waters within such area, no waters within such area shall constitute a part of such customs-enforcement area. The provisions of law applying to the high seas adjacent to customs waters of the United States shall be enforced in a customs-enforcement area upon any vessel, merchandise, or person found therein.

- (b) Boarding vessels; arrest and seizure; compliance with treaty provisions; authority of Secretary of Commerce unaffected

At any place within a customs-enforcement area the several officers of the customs may go on board of any vessel and examine the vessel and any merchandise or person on board, and bring the same into port, and, subject to regulations of the Secretary of the Treasury, it shall be their duty to pursue and seize or arrest and otherwise enforce upon such vessel, merchandise, or person, the provisions of law which are made effective thereto in pursuance of subsection (a) of this section in the same manner as such officers are or may be authorized or required to do in like case at any place in the United States by virtue of any law respecting the revenue: *Provided*, That nothing contained in this section or in any other provision of law respecting the revenue shall be construed to authorize or to require any officer of the United States to enforce any law thereof upon the high seas upon a foreign vessel in contravention of any treaty with a foreign government enabling or permitting the authorities of the United States to board, examine, search, seize, or otherwise to enforce upon such vessel upon the high seas the laws of the United States except as such authorities are or may otherwise be enabled or permitted under special arrangement with such foreign government: *Provided further*, That none of the provisions of this Act shall be construed to relieve the Secretary of Commerce of any authority, responsibility, or jurisdiction now vested in or imposed on that officer.

(Aug. 5, 1935, ch. 438, title I, § 1, 49 Stat. 517.)

REFERENCES IN TEXT

This Act, referred to in text, means act Aug. 5, 1935, which enacted this chapter and sections 1432a and 1601a of this title, amended sections 70, 483, 1401, 1434, 1438, 1441, 1581, 1584, 1585, 1586, 1587, 1591, 1592, 1618, 1619, 1621 of this title, and amended sections 60, 91, 104, 377, 386, 319, 325 of Title 46, Shipping. For complete classification of this Act to the Code, see Tables.

DELEGATION OF FUNCTIONS

For delegation to the Secretary of the Treasury of authority vested in the President by this section, see

Ex. Ord. No. 10289, Sept. 17, 1951, 16 P.R. 9499, set out as a note under section 301 of Title 3, The President.

CROSS REFERENCES

Boarding vessels, see section 1581 of this title.
 Certain functions of Secretary of Commerce relating to shipping and navigation transferred to Commissioner of Customs and Commandant of the Coast Guard, see note set out under former section 1 of Title 46, Shipping.

Hovering vessel defined, see sections 1401, 1709 of this title.

§ 1702. Repealed, June 25, 1948, ch. 645, § 21, 62 Stat. 862, *eff.* Sept. 1, 1948

Section, act Aug. 5, 1935, ch. 438, title I, § 2, 49 Stat. 518, related to smuggling into territory of a foreign government. See section 546 of Title 18, Crimes and Criminal Procedure.

§ 1703. Seizure and forfeiture of vessels

(a) Vessels subject to seizure and forfeiture

Whenever any vessel which shall have been built, purchased, fitted out in whole or in part, or held, in the United States or elsewhere, for the purpose of being employed to defraud the revenue or to smuggle any merchandise into the United States, or to smuggle any merchandise into the territory of any foreign government in violation of the laws there in force, if under the laws of such foreign government any penalty or forfeiture is provided for violation of the laws of the United States respecting the customs revenue, or whenever any vessel which shall be found, or discovered to have been employed, or attempted to be employed, within the United States for any such purpose, or in anywise in assistance thereof, or whenever any vessel of the United States which shall be found, or discovered to have been employed, or attempted to be employed at any place, for any such purpose, or is anywise in assistance thereof, if not subsequently forfeited to the United States or to a foreign government, is found at any place at which any such vessel may be examined by an officer of the customs in the enforcement of any law respecting the revenue, the said vessel and its cargo shall be seized and forfeited.

(b) "Vessels of the United States" defined

Every vessel which is documented, owned, or controlled in the United States, and every vessel of foreign registry which is, directly or indirectly, substantially owned or controlled by any citizen of, or corporation incorporated, owned, or controlled in, the United States, shall, for the purposes of this section, be deemed a vessel of the United States.

(c) Acts constituting prima facie evidence vessel engaged in smuggling

For the purposes of this section, the fact that a vessel has become subject to pursuit as provided in section 1581 of this title, or is a hovering vessel, or that a vessel fails, at any place within the customs waters of the United States or within a customs-enforcement area, to display lights as required by law, shall be prima facie evidence that such vessel is being, or has been, or is attempted to be employed to defraud the revenue of the United States.

(Aug. 5, 1935, ch. 438, title I, § 3, 49 Stat. 518.)

§ 1704. Refusal or revocation of registry, enrollment, license or number on evidence that vessel engaging in smuggling; appeal; immunity from liability

Subject to appeal to the Secretary of the Treasury and under such regulations as he may prescribe, whenever either the collector of customs of the district in which any vessel is, or is sought to be, registered, enrolled, or licensed, or the Commandant of the Coast Guard in the case of any vessel which is, or is sought to be numbered, is shown upon evidence which he deems sufficient that such vessel is being, or is intended to be, employed to smuggle, transport, or otherwise assist in the unlawful introduction or importation into the United States of any merchandise or person, or to smuggle any merchandise into the territory of any foreign government in violation of the laws there in force, if under the laws of such foreign government any penalty or forfeiture is provided for violation of the laws of the United States respecting the customs revenue, or whenever, from the design or fittings of any vessel or the nature of any repairs made thereon, it is apparent to such collector or Commandant that such vessel has been built or adapted for the purpose of smuggling merchandise, the said collector or Commandant shall revoke the registry, enrollment, license, or number of said vessel or refuse the same if application be made therefor, as the case may be. Such collector or Commandant and all persons acting by or under his direction shall be indemnified from any penalties or actions for damages for carrying out the provisions of this section.

(Aug. 5, 1935, ch. 438, title I, § 4, 49 Stat. 519; 1946 Reorg. Plan No. 3, §§ 101-104, *eff.* July 16, 1946, 11 P.R. 7975, 60 Stat. 1097.)

TRANSFER OF FUNCTIONS

The Coast Guard was transferred to the Department of Transportation and all functions, powers, and duties, relating to the Coast Guard, of the Secretary of the Treasury and of other offices and officers of the Department of the Treasury were transferred to the Secretary of Transportation by section 8(b)(1) of Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 938. Section 8(b)(2), however, provided that notwithstanding such transfer of functions, the Coast Guard shall operate as part of the Navy in time of war or when the President directs as provided in section 3 of Title 14, Coast Guard. See section 108 of Title 46, Transportation.

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in the Bureau of Customs of the Department of the Treasury to which appointments were required to be made by the President with the advice and consent of the Senate were ordered abolished, with such offices to be terminated not later than December 31, 1969, by Reorg. Plan No. 1, of 1965, *eff.* May 25, 1965, 30 P.R. 7036, 79 Stat. 1317, set out as a note under section 1 of this title.

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of that Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of those officers, agencies, and employees, by Reorg. Plan No. 25, of 1950, § 1, 2, *eff.* July 31, 1950, 15 P.R. 4935, 64 Stat. 1250, 1281, set out in the Appendix to

Title 5, Government Organization and Employees. Under the Plan, collectors of customs, and the Commandant of the Coast Guard, were officers of the Treasury Department, but, in the case of the Coast Guard, and the Commandant thereof, the Plan provided that, notwithstanding the transfer of functions, the Coast Guard should continue to operate as a part of the Navy, subject to the orders of the Secretary of the Navy, in time of war or when the President directed, as provided in sections 1 and 3 of Title 14, Coast Guard.

"Secretary of the Treasury" was substituted for "Secretary of Commerce" in text and provisions of this section relating to the numbering of vessels were changed to show that such functions were vested in the Commandant of the Coast Guard instead of collectors of customs on authority of Reorg. Plan No. 3 of 1946, set out in the Appendix to Title 5. Specifically, "the Commandant of the Coast Guard in the case of any vessel which is, or is sought to be" was inserted before "numbered" and "or Commandant" was inserted after "collector" in three places.

CROSS REFERENCES

Definition of enrollment, license, or register with respect to vessel; documentation, see section 68w of Title 48, Shipping.

§ 1795. Destruction of forfeited vessel or vehicle

Any vessel or vehicle forfeited to the United States, whether summarily or by a decree of any court, for violation of any law respecting the revenue, may, in the discretion of the Secretary of the Treasury, if he deems it necessary to protect the revenue of the United States, be destroyed in lieu of the sale thereof under existing law.

(Aug. 5, 1935, ch. 438, title I, § 5, 49 Stat. 519.)

§ 1796. Importation in vessels under thirty tons and aircraft; licenses; labels as prima facie evidence of foreign origin of merchandise

Except into the districts adjoining to the Dominion of Canada, or into the districts adjacent to Mexico, no merchandise of foreign growth or manufacture subject to the payment of duties shall be brought into the United States from any foreign port or place, or from any hovering vessel, in any vessel of less than thirty net tons burden without special license granted by the Secretary of the Treasury under such conditions as he may prescribe, nor in any other manner than by sea, except by aircraft duly licensed in accordance with law, or landed or unladen at any other port than is directed by law, under the penalty of seizure and forfeiture of all such unlicensed vessels or aircraft and of the merchandise imported therein, landed or unladen in any manner. Marks, labels, brands, or stamps, indicative of foreign origin, upon or accompanying merchandise or containers of merchandise found upon any such vessel or aircraft, shall be prima facie evidence of the foreign origin of such merchandise.

(Aug. 5, 1935, ch. 438, title I, § 6, 49 Stat. 519.)

§ 1797. Certificate for importation of alcoholic liquors in small vessels; bond where liquor destined to foreign port; penalty for failure to carry; lost, defaced, or incorrect certificate as relieving from penalty

In addition to any other requirement of law, every vessel, not exceeding five hundred net

tons, from a foreign port or place, or which has visited a hovering vessel, shall carry a certificate for the importation into the United States of any spirits, wines, or other alcoholic liquors on board thereof (sea stores excepted), destined to the United States, said certificate to be issued by a consular officer of the United States or other authorized person pursuant to such regulations as the Secretary of State and the Secretary of the Treasury may jointly prescribe. Any spirits, wines, or other alcoholic liquors (sea stores excepted) found, or discovered to have been, upon any such vessel at any place in the United States, or within the customs waters, without said certificate on board, which are not shown to have a bona fide destination without the United States, shall be seized and forfeited and, in the case of any such merchandise so destined to a foreign port or place, a bond shall be required in double the amount of the duties to which such merchandise would be subject if imported into the United States, conditioned upon the delivery of said merchandise at such foreign port or place as may be certified by a consular officer of the United States or otherwise as provided in said regulations: Provided, That if the collector shall be satisfied that the certificate required for the importation of any spirits, wines, or other alcoholic liquors was issued and was lost or mislaid without fraud, or was defaced by accident, or is incorrect by reason of clerical error or other mistake, said penalties shall not be incurred nor shall such bond be required. This section shall take effect on the sixtieth day following August 5, 1935.

(Aug. 5, 1935, ch. 438, title I, § 7, 49 Stat. 520.)

TRANSFER OF FUNCTIONS

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in the Bureau of Customs of the Department of the Treasury to which appointments were required to be made by the President with the advice and consent of the Senate were ordered abolished, with such offices to be terminated not later than December 31, 1965, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7025, 70 Stat. 1317, set out as a note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1584, 1706 of this title.

§ 1798. Lading vessel in foreign port with liquor for importation

(a) Allowing lading without certificate for importation; liability of master

If the master of any vessel of the United States, not exceeding five hundred net tons, allows such vessel to be laden at any foreign port or other place without the United States with any merchandise destined to the United States and consisting of any spirits, wines, or other alcoholic liquors (sea stores excepted), which facts may be evidenced by the testimony or depositions of foreign administrative officials or certified copies of their records or by other sufficient evidence, without certificate issued for the importation of such merchandise

into the United States as required by section 1707 of this title, the master of such vessel shall, in addition to any other penalties provided by law, be liable to a penalty equal to the value of the said merchandise but not less than \$1,000 and such vessel and such merchandise shall be seized and forfeited.

(b) Procuring lading with intent to defraud revenue laws; liability of citizen, master, and members of crew of United States vessel

Whoever, being a citizen of the United States or a master or a member of the crew of a vessel of the United States, if such vessel does not exceed five hundred net tons, shall, with intent to defraud the revenue of the United States, procure, or aid or assist in procuring, any merchandise destined to the United States and consisting of any spirits, wines, or other alcoholic liquors, without certificate issued for the importation thereof into the United States as required by section 1707 of this title, to be laden upon such vessel at any foreign port or other place without the United States, which facts may be evidenced by the testimony or depositions of foreign administrative officials or certified copies of their records or by other sufficient evidence, shall, in addition to any other penalties provided by law, be liable to a fine of not more than \$1,000 or to imprisonment for not more than two years, or to both such fine and imprisonment.

(Aug. 5, 1935, ch. 438, title I, § 8, 49 Stat. 520.)

CROSS REFERENCES

Felony and misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.

§ 1709. Definitions

When used in this Act:

(a) The term "United States", when used in a geographical sense, includes all Territories and possessions of the United States, except the Virgin Islands, the Canal Zone, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and the island of Guam.

(b) The term "officer of the customs" means any officer of the Customs Service or any commissioned, warrant, or petty officer of the Coast Guard, or agent or other person authorized by law or by the Secretary of the Treasury, or appointed in writing by a collector, to perform the duties of an officer of the Customs Service.

(c) The term "customs waters" means, in the case of a foreign vessel subject to a treaty or other arrangement between a foreign government and the United States enabling or permitting the authorities of the United States to board, examine, search, seize, or otherwise to enforce upon such vessel upon the high seas the laws of the United States, the waters within such distance of the coast of the United States as the said authorities are or may be so enabled or permitted by such treaty or arrangement and, in the case of every other vessel, the waters within four leagues of the coast of the United States.

(d) The term "hovering vessel" means any vessel which is found or kept off the coast of the United States within or without the cus-

tom waters, if, from the history, conduct, character, or location of the vessel, it is reasonable to believe that such vessel is being used or may be used to introduce or promote or facilitate the introduction or attempted introduction of merchandise into the United States in violation of the laws respecting the revenue.

(Aug. 5, 1935, ch. 438, title IV, § 401, 49 Stat. 529; June 25, 1938, ch. 679, § 2, 52 Stat. 1077; Proc. No. 2895, July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; June 30, 1955, ch. 258, § 2(b), 69 Stat. 242.)

REFERENCES IN TEXT

This Act, referred to in text, means act Aug. 5, 1935, which enacted this chapter and sections 1432a and 1601a of this title, amended sections 70, 483, 1401, 1434, 1436, 1441, 1581, 1584, 1585, 1586, 1587, 1591, 1592, 1615, 1619, 1621 of this title, and amended sections 60, 91, 106, 377, 288, 319, 326 of Title 46, Shipping. For complete classification of this Act to the Code, see Tables.

For definition of Canal Zone, referred to in subsec. (a), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

CODIFICATION

Words "the Philippine Islands" in subsec. (a) were omitted on authority of Proc. No. 2895, which is set out as a note under section 1394 of Title 22, Foreign Relations and Intercourse, and in which the President proclaimed the independence of the Philippines.

AMENDMENTS

1955—Subsec. (a). Act June 30, 1955, inserted "Johnston Island".

1938—Subsec. (a). Act June 25, 1938, inserted "Wake Island, Midway Islands, Kingman Reef" before "and the island of Guam."

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment by act June 30, 1955, effective July 1, 1955, see Effective Date of 1955 Amendment note set out under section 1401 of this title.

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on the thirtieth day following June 25, 1938, except as otherwise specifically provided, see note set out under section 1401 of this title.

TRANSFER OF FUNCTIONS

The Coast Guard was transferred to the Department of Transportation and all functions, powers, and duties, relating to the Coast Guard, of the Secretary of the Treasury and of other offices and officers of the Department of the Treasury were transferred to the Secretary of Transportation by section 6(b)(1) of Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 938. Section 6(b)(2), however, provided that notwithstanding such transfer of functions, the Coast Guard shall operate as part of the Navy in time of war or when the President directs as provided in section 3 of Title 14, Coast Guard. See section 108 of Title 49, Transportation.

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in the Bureau of Customs of the Department of the Treasury to which appointments were required to be made by the President with the advice and consent of the Senate were ordered abolished, with such offices to be terminated not later than December 31, 1966, by Reorg. Plan No. 1, of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out as a note under section 1, of this title.

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of that Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of those officers, agencies, and employees, by Reorg. Plan No. 28 of 1950, §§ 1, 2, eff. July 31, 1950, 15 P.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Under the Plan, collectors of customs, and the Commandant of the Coast Guard, were officers of the Treasury Department, but, in the case of the Coast Guard, and the Commandant thereof, the Plan provided that, notwithstanding the transfer of functions, the Coast Guard should continue to operate as a part of the Navy, subject to the orders of the Secretary of the Navy, in time of war or when the President directed, as provided in sections 1 and 3 of Title 14, Coast Guard.

§ 1710. Separability of provisions

If any clause, sentence, paragraph, or part of this Act, or the application thereof to any person, or circumstances, is held invalid, the application thereof to other persons, or circumstances, and the remainder of the Act, shall not be affected thereby.

(Aug. 5, 1935, ch. 438, title IV, § 402, 49 Stat. 529.)

REVISIONS IN TEXT

This Act, referred to in text, means act Aug. 5, 1935, which enacted this chapter and sections 1432a and 1601a of this title, amended sections 70, 483, 1401, 1434, 1438, 1441, 1501, 1504, 1508, 1586, 1587, 1591, 1592, 1615, 1619, 1621 of this title, and amended sections 60, 91, 106, 277, 288, 319, 325 of Title 46, Shipping. For complete classification of this Act to the Code, see Tables.

§ 1711. Citation of chapter

This Act may be cited as the "Anti-Smuggling Act".

(Aug. 5, 1935, ch. 438, title IV, § 403, 49 Stat. 529.)

REVISIONS IN TEXT

This Act, referred to in text, means act Aug. 5, 1935, which enacted this chapter and sections 1432a and 1601a of this title, amended sections 70, 483, 1401, 1434, 1438, 1441, 1501, 1504, 1508, 1586, 1587, 1591, 1592, 1615, 1619, 1621 of this title, and amended sections 60, 91, 106, 277, 288, 319, 325 of Title 46, Shipping. For complete classification of this Act to the Code, see Tables.

**Act to Provide for Seizure and Forfeiture of
Carriers Transporting Contraband Articles, 1939
(as amended)***

* 53 Stat. 1291; 49 U.S.C. §781 (1976).

[CHAPTER 618]

AN ACT

To provide for the seizure and forfeiture of vessels, vehicles, and aircraft used to transport narcotic drugs, firearms, and counterfeit coins, obligations, securities, and paraphernalia, and for other purposes.

August 2, 1939
[E. R. 6556]
[Public No. 357]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) it shall be unlawful (1) to transport, carry, or convey any contraband article in, upon, or by means of any vessel, vehicle, or aircraft; (2) to conceal or possess any contraband article in or upon any vessel, vehicle, or aircraft, or upon the person of anyone in or upon any vessel, vehicle, or aircraft; or (3) to use any vessel, vehicle, or aircraft to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange, or giving away of any contraband article.

Transportation, etc., of contraband articles by vessel, vehicle, or aircraft, unlawful.

(b) As used in this section, the term "contraband article" means—
(1) Any narcotic drug which has been or is possessed with intent to sell or offer for sale in violation of any laws or regulations of the United States dealing therewith, or which is sold or offered for sale in violation thereof, or which does not bear appropriate tax-paid internal-revenue stamps as required by law or regulations;

"Contraband article" defined.
Narcotic drug.

(2) Any firearm, with respect to which there has been committed any violation of any provision of the National Firearms Act, as now or hereafter amended, or any regulation issued pursuant thereto; or
(3) Any falsely made, forged, altered, or counterfeit coin or obligation or other security of the United States or of any foreign government; or any material or apparatus, or paraphernalia fitted or intended to be used, or which shall have been used, in the making of any such falsely made, forged, altered, or counterfeit coin or obligation or other security.

Firearm.
48 Stat. 1236.
25 U. S. C. §§ 1132-11329; Supp. 11, ch. 15A.
Counterfeit coin, obligation, etc.

SEC. 2. Any vessel, vehicle, or aircraft which has been or is being used in violation of any provision of section 1, or in, upon, or by means of which any violation of section 1 has taken or is taking

Seizure and forfeiture of vessels, etc., transporting contraband.

Proviso.
Owner or master a consenting party or privy thereto.

Violation by person other than owner. Possessing vessel, etc., unlawfully.

Enforcement provisions.

Application of laws.

Proviso.
Duties with respect to seizures, etc.

Appropriations made available.

Provisions deemed supplemental to existing laws.

Definitions.

"Vessel."

"Vehicle."

place, shall be seized and forfeited: *Provided*, That no vessel, vehicle, or aircraft used by any person as a common carrier in the transaction of business as such common carrier shall be forfeited under the provisions of this Act unless it shall appear that (1) in the case of a railway car or engine, the owner, or (2) in the case of any other such vessel, vehicle, or aircraft, the owner or the master of such vessel or the owner or conductor, driver, pilot, or other person in charge of such vehicle or aircraft was at the time of the alleged illegal act a consenting party or privy thereto: *Provided further*, That no vessel, vehicle, or aircraft shall be forfeited under the provisions of this Act by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such vessel, vehicle, or aircraft was unlawfully in the possession of a person who acquired possession thereof in violation of the criminal laws of the United States, or of any State.

SEC. 3. The Secretary of the Treasury is empowered to authorize, or designate, officers, agents, or other persons to carry out the provisions of this Act. It shall be the duty of any officer, agent, or other person so authorized or designated, or authorized by law, whenever he shall discover any vessel, vehicle, or aircraft which has been or is being used in violation of any of the provisions of this Act, or in, upon, or by means of which any violation of this Act has taken or is taking place, to seize such vessel, vehicle, or aircraft and to place it in the custody of such person as may be authorized or designated for that purpose by the Secretary of the Treasury, to await disposition pursuant to the provisions of this Act and any regulations issued hereunder.

SEC. 4. All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of vessels and vehicles for violation of the customs laws; the disposition of such vessels and vehicles or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as applicable and not inconsistent with the provisions hereof: *Provided*, That such duties as are imposed upon the collector of customs or any other person with respect to the seizure and forfeiture of vessels and vehicles under the customs laws shall be performed with respect to seizures and forfeitures of vessels, vehicles, and aircraft under this Act by such officers, agents, or other persons as may be authorized or designated for that purpose by the Secretary of the Treasury.

SEC. 5. Any appropriation which has been or shall hereafter be made for the enforcement of the customs, narcotics, counterfeiting, or internal-revenue laws, and the provisions of the National Firearms Act shall be available for the defraying of expenses of carrying out the provisions of this Act.

SEC. 6. The provisions of this Act shall be construed to be supplemental to, and not to impair in any way, existing provisions of law imposing fines, penalties, or forfeitures; or providing for the seizure, condemnation, or disposition of forfeited property or the proceeds thereof; or authorizing the remission or mitigation of fines, penalties, or forfeitures.

SEC. 7. When used in this Act—

(a) The term "vessel" includes every description of watercraft or other contrivance used, or capable of being used, as means of transportation in water, but does not include aircraft;

(b) The term "vehicle" includes every description of carriage or other contrivance used, or capable of being used, as means of transportation on, below, or above the land, but does not include aircraft;

(c) The term "aircraft" includes every description of craft or carriage or other contrivance used, or capable of being used, as means of transportation through the air;

(d) The term "narcotic drug" means any narcotic drug, as now or hereafter defined by the Narcotic Drugs Import and Export Act, the internal-revenue laws or any amendments thereof, or the regulations issued thereunder; or marihuana as now or hereafter defined by the Marihuana Tax Act of 1937 or the regulations issued thereunder;

(e) The term "firearm" means any firearm, as now or hereafter defined by the National Firearms Act, or any amendments thereof, or the regulations issued thereunder; and

(f) The words "obligation or other security of the United States" are used as now or hereafter defined in section 147 of the Criminal Code, as amended (U. S. C., title 18, sec. 261).

SEC. 8. The Secretary of the Treasury shall prescribe such rules and regulations as may be necessary to carry out the provisions of this Act.

Approved, August 9, 1939.

"Aircraft."

"Narcotic drug."
42 STAT. 566.
21 U. S. C. §§ 171-185.

50 STAT. 551.
26 U. S. C., Supp.
IV, § 1306-1309q.

"Firearm."
48 STAT. 1238.
26 U. S. C. §§ 1132-1122q; Supp. IV, ch. 15A.

"Obligation or other security of the United States."

18 U. S. C. § 261; Supp. IV, § 261; Rules and regulations.

D. LIVING RESOURCES

1. Fisheries

a. General

Fishery Conservation and Management Act of 1976*

* Pub. L. 94-265, 90 Stat. 331; 16 U.S.C. §1801 (1976).

Public Law 94-265
94th Congress

An Act

To provide for the conservation and management of the fisheries, and for other purposes.

Apr. 13, 1976

[H.R. 200]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, with the following table of contents, may be cited as the "Fishery Conservation and Management Act of 1976".

Fishery
Conservation and
Management Act
of 1976.
16 USC 1801
note.

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Sec. 404. Marine Mammal Protection Act amendment.
Sec. 405. Atlantic Tunas Convention Act amendment.
Sec. 406. Authorization of appropriations.

SEC. 2. FINDINGS, PURPOSES AND POLICY

(a) FINDINGS.—The Congress finds and declares the following: 16 USC 1801.

(1) The fish off the coasts of the United States, the highly migratory species of the high seas, the species which dwell on or in the Continental Shelf appertaining to the United States, and the anadromous species which spawn in United States rivers or estuaries, constitute valuable and renewable natural resources.

These fishery resources contribute to the food supply, economy, and health of the Nation and provide recreational opportunities.

(2) As a consequence of increased fishing pressure and because of the inadequacy of fishery conservation and management practices and controls (A) certain stocks of such fish have been overfished to the point where their survival is threatened, and (B) other such stocks have been so substantially reduced in number that they could become similarly threatened.

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

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

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

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

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

(b) **PURPOSES.**—It is therefore declared to be the purposes of the Congress in this Act—

(1) to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by establishing (A) a fishery conservation zone within which the United States will assume exclusive fishery management authority over all fish, except highly migratory species, and (B) exclusive fishery management authority beyond such zone over such anadromous species and Continental Shelf fishery resources;

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

(3) to promote domestic commercial and recreational fishing under sound conservation and management principles;

(4) to provide for the preparation and implementation, in accordance with national standards, of fishery management plans

which will achieve and maintain, on a continuing basis, the optimum yield from each fishery;

(5) to establish Regional Fishery Management Councils to prepare, monitor, and revise such plans under circumstances (A) which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States; and

(6) to encourage the development of fisheries which are currently underutilized or not utilized by United States fishermen, including bottom fish off Alaska.

(c) **POLICY.**—It is further declared to be the policy of the Congress in this Act—

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

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

(3) to assure that the national fishery conservation and management program utilizes, and is based upon, the best scientific information available; involves, and is responsive to the needs of, interested and affected States and citizens; promotes efficiency; draws upon Federal, State, and academic capabilities in carrying out research, administration, management, and enforcement; and is workable and effective;

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

(5) to support and encourage continued active United States efforts to obtain an internationally acceptable treaty, at the Third United Nations Conference on the Law of the Sea, which provides for effective conservation and management of fishery resources.

SEC. 3. DEFINITIONS.

As used in this Act, unless the context otherwise requires—

16 USC 1802.

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

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

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

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

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

(3) The term “Continental Shelf” means the seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, of the United States, to a depth of 200 meters or, beyond that limit, to where the depth of the super-

jacent waters admits of the exploitation of the natural resources of such areas.

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

COLEENTERATA

Bamboo Coral—*Acanella* spp.;
 Black Coral—*Antipathes* spp.;
 Gold Coral—*Callogorgia* spp.;
 Precious Red Coral—*Corallium* spp.;
 Bamboo Coral—*Keratoisis* spp.; and
 Gold Coral—*Parazoanthus* spp.

CRUSTACEA

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

MOLLUSKS

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

SPONGES

Glove Sponge—*Hippiospongia canaliculata*;
 Sheepswool Sponge—*Hippiospongia lachne*;
 Grass Sponge—*Spongia graminea*; and
 Yellow Sponge—*Spongia barbara*.

Publication in
 Federal Register.

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

(A) immobile on or under the seabed, or

(B) unable to move except in constant physical contact with the seabed or subsoil,

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

(5) The term "Council" means any Regional Fishery Management Council established under section 302.

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

(7) The term "fishery" means—

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

(B) any fishing for such stocks.

(8) The term "fishery conservation zone" means the fishery conservation zone established by section 101.

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

(10) The term "fishing" means—

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

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

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

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

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

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

(A) fishing; or

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

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

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

(14) The term "highly migratory species" means species of tuna which, in the course of their life cycle, spawn and migrate over great distances in waters of the ocean.

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

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

(17) The term "national standards" means the national standards for fishery conservation and management set forth in section 301.

(18) The term "optimum", with respect to the yield from a fishery, means the amount of fish—

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

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

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

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

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

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

USC prec. title 1.

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

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

(25) The term "vessel of the United States" means any vessel documented under the laws of the United States or registered under the laws of any State.

TITLE I—FISHERY MANAGEMENT AUTHORITY OF THE UNITED STATES

SEC. 101. FISHERY CONSERVATION ZONE.

16 USC 1811.

There is established a zone contiguous to the territorial sea of the United States to be known as the fishery conservation zone. The inner boundary of the fishery conservation zone is a line coterminous with the seaward boundary of each of the coastal States, and the outer boundary of such zone is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.

SEC. 102. EXCLUSIVE FISHERY MANAGEMENT AUTHORITY

16 USC 1812.

The United States shall exercise exclusive fishery management authority, in the manner provided for in this Act, over the following:

(1) All fish within the fishery conservation zone.

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

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

SEC. 103. HIGHLY MIGRATORY SPECIES.

16 USC 1813.

The exclusive fishery management authority of the United States shall not include, nor shall it be construed to extend to, highly migratory species of fish.

SEC. 104. EFFECTIVE DATE.

16 USC 1811
note.

This title shall take effect March 1, 1977.

TITLE II—FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS

SEC. 201. FOREIGN FISHING.

(a) **IN GENERAL.**—After February 28, 1977, no foreign fishing is authorized within the fishery conservation zone, or for anadromous species or Continental Shelf fishery resources beyond the fishery conservation zone, unless such foreign fishing—

- (1) is authorized under subsection (b) or (c);
- (2) is not prohibited by subsection (f); and
- (3) is conducted under, and in accordance with, a valid and applicable permit issued pursuant to section 204.

(b) **EXISTING INTERNATIONAL FISHERY AGREEMENTS.**—Foreign fishing described in subsection (a) may be conducted pursuant to an international fishery agreement (subject to the provisions of section 202(b) or (c)), if such agreement—

- (1) was in effect on the date of enactment of this Act; and
- (2) has not expired, been renegotiated, or otherwise ceased to be of force and effect with respect to the United States.

(c) **GOVERNING INTERNATIONAL FISHERY AGREEMENTS.**—Foreign fishing described in subsection (a) may be conducted pursuant to an international fishery agreement (other than a treaty) which meets the requirements of this subsection if such agreement becomes effective after application of section 203. Any such international fishery agreement shall hereafter in this Act be referred to as a “governing international fishery agreement”. Each governing international fishery agreement shall acknowledge the exclusive fishery management authority of the United States, as set forth in this Act. It is the sense of the Congress that each such agreement shall include a binding commitment, on the part of such foreign nation and its fishing vessels, to comply with the following terms and conditions:

Terms and conditions.

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

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

(A) any officer authorized to enforce the provisions of this Act (as provided for in section 311) be permitted—

Post, p. 358.

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

(ii) to make arrests and seizures provided for in section 311(b) whenever such officer has reasonable cause to believe, as a result of such a search or inspection, that any such vessel or any person has committed an act prohibited by section 307, and

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(iii) to examine and make notations on the permit issued pursuant to section 204 for such vessel;

(B) the permit issued for any such vessel pursuant to section 204 be prominently displayed in the wheelhouse of such vessel;

(C) transponders, or such other appropriate position-fixing and identification equipment as the Secretary of the department in which the Coast Guard is operating determines

to be appropriate, be installed and maintained in working order on each such vessel;

(D) duly authorized United States observers be permitted on board any such vessel and that the United States be reimbursed for the cost of such observers;

(E) any fees required under section 204(b)(10) be paid in advance;

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

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

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

(3) The foreign nation and the owners or operators of all of the fishing vessels of such nation shall not, in any year, exceed such nation's allocation of the total allowable level of foreign fishing, as determined under subsection (e).

(4) The foreign nation will—

(A) apply, pursuant to section 204, for any required permits;

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

(C) abide by, and take appropriate steps under its own laws to assure that all such owners and operators comply with, section 204(a) and the applicable conditions and restrictions established under section 204(b)(7).

(d) **TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING.**—The total allowable level of foreign fishing, if any, with respect to any fishery subject to the exclusive fishery management authority of the United States, shall be that portion of the optimum yield of such fishery which will not be harvested by vessels of the United States, as determined in accordance with the provisions of this Act.

(e) **ALLOCATION OF ALLOWABLE LEVEL.**—The Secretary of State, in cooperation with the Secretary, shall determine the allocation among foreign nations of the total allowable level of foreign fishing which is permitted with respect to any fishery subject to the exclusive fishery management authority of the United States. In making any such determination, the Secretary of State and the Secretary shall consider—

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

(2) whether such nations have cooperated with the United States in, and made substantial contributions to, fishery research and the identification of fishery resources;

(3) whether such nations have cooperated with the United States in enforcement and with respect to the conservation and management of fishery resources; and

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

(f) **RECIPROCITY.**—Foreign fishing shall not be authorized for the fishing vessels of any foreign nation unless such nation satisfies the

Secretary and the Secretary of State that such nation extends substantially the same fishing privileges to fishing vessels of the United States, if any, as the United States extends to foreign fishing vessels.

(g) **PRELIMINARY FISHERY MANAGEMENT PLANS.**—The Secretary, when notified by the Secretary of State that any foreign nation has submitted an application under section 204(b), shall prepare a preliminary fishery management plan for any fishery covered by such application if the Secretary determines that no fishery management plan for that fishery will be prepared and implemented, pursuant to title III, before March 1, 1977. To the extent practicable, each such plan—

Post, p. 346.

(1) shall contain a preliminary description of the fishery and a preliminary determination as to the optimum yield from such fishery and the total allowable level of foreign fishing with respect to such fishery;

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

(3) shall require the submission of pertinent data to the Secretary, with respect to such fishery, as described in section 303(a)(5); and

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

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

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

(C) are described in section 303(b)(2), (3), (4), (5), and (7).

Each preliminary fishery management plan shall be in effect with respect to foreign fishing for which permits have been issued until a fishery management plan is prepared and implemented, pursuant to title III, with respect to such fishery. The Secretary may, in accordance with section 553 of title 5, United States Code, also prepare and promulgate interim regulations with respect to any such preliminary plan. Such regulations shall be in effect until regulations implementing the applicable fishery management plan are promulgated pursuant to section 305.

Regulations.

SEC. 202. INTERNATIONAL FISHERY AGREEMENTS.

(a) **NEGOTIATIONS.**—The Secretary of State—

16 USC 1822.

(1) shall renegotiate treaties as provided for in subsection (b);

(2) shall negotiate governing international fishery agreements described in section 201(c);

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

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

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

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

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

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

(c) **INTERNATIONAL FISHERY AGREEMENTS.**—No international fishery agreement (other than a treaty) which pertains to foreign fishing within the fishery conservation zone (or within the area that will constitute such zone after February 28, 1977), or for anadromous species or Continental Shelf fishery resources beyond such zone or area—

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

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

by the United States unless it is in accordance with the provisions of section 201 (c).

(d) **BOUNDARY NEGOTIATIONS.**—The Secretary of State, in cooperation with the Secretary, may initiate and conduct negotiations with any adjacent or opposite foreign nation to establish the boundaries of the fishery conservation zone of the United States in relation to any such nation.

(e) **NONRECOGNITION.**—It is the sense of the Congress that the United States Government shall not recognize the claim of any foreign nation to a fishery conservation zone (or the equivalent) beyond such nation's territorial sea, to the extent that such sea is recognized by the United States, if such nation—

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

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

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

SEC. 203. CONGRESSIONAL OVERSIGHT OF GOVERNING INTERNATIONAL FISHERY AGREEMENTS.

(a) **IN GENERAL.**—No governing international fishery agreement shall become effective with respect to the United States before the close of the first 60 calendar days of continuous session of the Congress after the date on which the President transmits to the House of Representatives and to the Senate a document setting forth the text of such governing international fishery agreement. A copy of the document shall be delivered to each House of Congress on the same day and shall be delivered to the Clerk of the House of Representatives, if the House is not in session, and to the Secretary of the Senate, if the Senate is not in session.

(b) **REFERRAL TO COMMITTEES.**—Any document described in subsection (a) shall be immediately referred in the House of Representatives to the Committee on Merchant Marine and Fisheries, and in the Senate to the Committees on Commerce and Foreign Relations.

(c) **COMPUTATION OF 60-DAY PERIOD.**—For purposes of subsection (a)—

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

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

(d) **CONGRESSIONAL PROCEDURES.**—

(1) **RULES OF THE HOUSE OF REPRESENTATIVES AND SENATE.**—The provisions of this section are enacted by the Congress—

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

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

(2) **DEFINITION.**—For purposes of this subsection, the term “fishery agreement resolution” refers to a joint resolution of either House of Congress—

(A) the effect of which is to prohibit the entering into force and effect of any governing international fishery agreement the text of which is transmitted to the Congress pursuant to subsection (a); and

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

(3) **PLACEMENT ON CALENDAR.**—Any fishery agreement resolution upon being reported shall immediately be placed on the appropriate calendar.

(4) **FLOOR CONSIDERATION IN THE HOUSE.**—

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

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

Debate
limitation.

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

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

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

(5) FLOOR CONSIDERATION IN THE SENATE.—

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

(B) Debate in the Senate on any fishery agreement resolution and on all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

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

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

Debate
limitation.

SEC. 204. PERMITS FOR FOREIGN FISHING.

16 USC 1824.

(a) **IN GENERAL.**—After February 28, 1977, no foreign fishing vessel shall engage in fishing within the fishery conservation zone, or for anadromous species or Continental Shelf fishery resources beyond such zone, unless such vessel has on board a valid permit issued under this section for such vessel.

(b) **APPLICATIONS AND PERMITS UNDER GOVERNING INTERNATIONAL FISHERY AGREEMENTS.**—

(1) **ELIGIBILITY.**—Each foreign nation with which the United States has entered into a governing international fishery agreement shall submit an application to the Secretary of State each year for a permit for each of its fishing vessels that wishes to engage in fishing described in subsection (a).

(2) **FORMS.**—The Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall prescribe the forms for permit applications submitted under this subsection and for permits issued pursuant to any such application.

(3) **CONTENTS.**—Any application made under this subsection shall specify—

(A) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof;

(B) the tonnage, capacity, speed, processing equipment, type and quantity of fishing gear, and such other pertinent information with respect to characteristics of each such vessel as the Secretary may require;

(C) each fishery in which each such vessel wishes to fish;

(D) the amount of fish or tonnage of catch contemplated for each such vessel during the time such permit is in force; and

(E) the ocean area in which, and the season or period during which, such fishing will be conducted;

and shall include any other pertinent information and material which the Secretary may require.

(4) **TRANSMITTAL FOR ACTION.**—Upon receipt of any application which complies with the requirements of paragraph (3), the Secretary of State shall publish such application in the Federal Register and shall promptly transmit—

Publication in
Federal Register.

(A) such application, together with his comments and recommendations thereon, to the Secretary;

(B) a copy of the application to each appropriate Council and to the Secretary of the department in which the Coast Guard is operating; and

(C) a copy of such material to the Committee on Merchant Marine and Fisheries of the House of Representatives and to the Committees on Commerce and Foreign Relations of the Senate.

Transmittal to
congressional
committees.

(5) **ACTION BY COUNCIL.**—After receipt of an application transmitted under paragraph (4) (B), each appropriate Council shall prepare and submit to the Secretary such written comments on the application as it deems appropriate. Such comments shall be submitted within 45 days after the date on which the application is received by the Council and may include recommendations with respect to approval of the application and, if approval is recommended, with respect to appropriate conditions and restrictions thereon. Any interested person may submit comments to such Council with respect to any such application. The Council shall consider any such comments in formulating its submission to the Secretary.

Written
comments.

(6) **APPROVAL.**—After receipt of any application transmitted under paragraph (4) (A), the Secretary shall consult with the Secretary of State and, with respect to enforcement, with the Secretary of the department in which the Coast Guard is operating. The Secretary, after taking into consideration the views and recommendations of such Secretaries, and any comments submitted by any Council under paragraph (5), may approve the application, if he determines that the fishing described in the application will meet the requirements of this Act.

(7) **ESTABLISHMENT OF CONDITIONS AND RESTRICTIONS.**—The Secretary shall establish conditions and restrictions which shall be included in each permit issued pursuant to any application approved under paragraph (6) and which must be complied with by the owner or operator of the fishing vessel for which the permit is issued. Such conditions and restrictions shall include the following:

(A) All of the requirements of any applicable fishery management plan, or preliminary fishery management plan, and the regulations promulgated to implement any such plan.

(B) The requirement that no permit may be used by any vessel other than the fishing vessel for which it is issued.

(C) The requirements described in section 201(c) (1), (2), and (3).

(D) Any other condition and restriction related to fishery conservation and management which the Secretary prescribes as necessary and appropriate.

(8) NOTICE OF APPROVAL.—The Secretary shall promptly transmit a copy of each application approved under paragraph (6) and the conditions and restrictions established under paragraph (7) to—

(A) the Secretary of State for transmittal to the foreign nation involved;

(B) the Secretary of the department in which the Coast Guard is operating;

(C) any Council which has authority over any fishery specified in such application; and

(D) the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committees on Commerce and Foreign Relations of the Senate.

(9) DISAPPROVAL OF APPLICATIONS.—If the Secretary does not approve any application submitted by a foreign nation under this subsection, he shall promptly inform the Secretary of State of the disapproval and his reasons therefore. The Secretary of State shall notify such foreign nation of the disapproval and the reasons therefor. Such foreign nation, after taking into consideration the reasons for disapproval, may submit a revised application under this subsection.

(10) FEES.—Reasonable fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit is issued pursuant to this subsection. The Secretary, in consultation with the Secretary of State, shall establish and publish a schedule of such fees, which shall apply nondiscriminatorily to each foreign nation. In determining the level of such fees, the Secretary may take into account the cost of carrying out the provisions of this Act with respect to foreign fishing, including, but not limited to, the cost of fishery conservation and management, fisheries research, administration, and enforcement.

(11) ISSUANCE OF PERMITS.—If a foreign nation notifies the Secretary of State of its acceptance of the conditions and restrictions established by the Secretary under paragraph (7), the Secretary of State shall promptly transmit such notification to the Secretary. Upon payment of the applicable fees established pursuant to paragraph (10), the Secretary shall thereupon issue to such foreign nation, through the Secretary of State, permits for the appropriate fishing vessels of that nation. Each permit shall contain a statement of all conditions and restrictions established under paragraph (7) which apply to the fishing vessel for which the permit is issued.

(12) SANCTIONS.—If any foreign fishing vessel for which a permit has been issued pursuant to this subsection has been used in the commission of any act prohibited by section 307 the Secretary may, or if any civil penalty imposed under section 308 or any criminal fine imposed under section 309 has not been paid and is overdue the Secretary shall—

Transmittal to congressional committees.

(A) revoke such permit, with or without prejudice to the right of the foreign nation involved to obtain a permit for such vessel in any subsequent year;

(B) suspend such permit for the period of time deemed appropriate; or

(C) impose additional conditions and restrictions on the approved application of the foreign nation involved and on any permit issued under such application.

Any permit which is suspended under this paragraph for non-payment of a civil penalty shall be reinstated by the Secretary upon the payment of such civil penalty together with interest thereon at the prevailing rate.

(c) **REGISTRATION PERMITS.**—The Secretary of State, in cooperation with the Secretary, shall issue annually a registration permit for each fishing vessel of a foreign nation which is a party to an international fishery agreement under which foreign fishing is authorized by section 201(b) and which wishes to engage in fishing described in subsection (a). Each such permit shall set forth the terms and conditions contained in the agreement that apply with respect to such fishing, and shall include the additional requirement that the owner or operator of the fishing vessel for which the permit is issued shall prominently display such permit in the wheelhouse of such vessel and show it, upon request, to any officer authorized to enforce the provisions of this Act (as provided for in section 311). The Secretary of State, after consultation with the Secretary and the Secretary of the department in which the Coast Guard is operating, shall prescribe the form and manner in which applications for registration permits may be made, and the forms of such permits. The Secretary of State may establish, require the payment of, and collect fees for registration permits; except that the level of such fees shall not exceed the administrative costs incurred by him in issuing such permits.

SEC. 205. IMPORT PROHIBITIONS.

(a) **DETERMINATIONS BY SECRETARY OF STATE.**—If the Secretary of State determines that—

(1) he has been unable, within a reasonable period of time, to conclude with any foreign nation an international fishery agreement allowing fishing vessels of the United States equitable access to fisheries over which that nation asserts exclusive fishery management authority, as recognized by the United States, in accordance with traditional fishing activities of such vessels, if any, and under terms not more restrictive than those established under sections 201 (c) and (d) and 204 (b) (7) and (10), because such nation has (A) refused to commence negotiations, or (B) failed to negotiate in good faith;

(2) any foreign nation is not allowing fishing vessels of the United States to engage in fishing for highly migratory species in accordance with an applicable international fishery agreement, whether or not such nation is a party thereto;

(3) any foreign nation is not complying with its obligations under any existing international fishery agreement concerning fishing by fishing vessels of the United States in any fishery over which that nation asserts exclusive fishery management authority;

or

(4) any fishing vessel of the United States, while fishing in waters beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States, is seized by any foreign nation—

16 USC 1825.

(A) in violation of an applicable international fishery agreement;

(B) without authorization under an agreement between the United States and such nation; or

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

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

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

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

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

(c) **REMOVAL OF PROHIBITION.**—If the Secretary of State finds that the reasons for the imposition of any import prohibition under this section no longer prevail, the Secretary of State shall notify the Secretary of the Treasury, who shall promptly remove such import prohibition.

(d) **DEFINITIONS.**—As used in this section—

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

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

TITLE III—NATIONAL FISHERY MANAGEMENT PROGRAM

SEC. 301. NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT.

16 USC 1851.

(a) **IN GENERAL.**—Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this title shall be consistent with the following national standards for fishery conservation and management:

(1) Conservation and management measures shall prevent over-fishing while achieving, on a continuing basis, the optimum yield from each fishery.

(2) Conservation and management measures shall be based upon the best scientific information available.

(3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

(4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(5) Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

(7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

(b) **GUIDELINES.**—The Secretary shall establish guidelines, based on the national standards, to assist in the development of fishery management plans.

SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS.

(a) **ESTABLISHMENT.**—There shall be established, within 120 days after the date of the enactment of this Act, eight Regional Fishery Management Councils, as follows:

16 USC 1852.
Establishment.

(1) **NEW ENGLAND COUNCIL.**—The New England Fishery Management Council shall consist of the States of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut and shall have authority over the fisheries in the Atlantic Ocean seaward of such States. The New England Council shall have 17 voting members, including 11 appointed by the Secretary pursuant to subsection (b) (1) (C) (at least one of whom shall be appointed from each such State).

(2) **MID-ATLANTIC COUNCIL.**—The Mid-Atlantic Fishery Management Council shall consist of the States of New York, New Jersey, Delaware, Pennsylvania, Maryland, and Virginia and shall have authority over the fisheries in the Atlantic Ocean seaward of such States. The Mid-Atlantic Council shall have 19 voting members, including 12 appointed by the Secretary pursuant to subsection (b) (1) (C) (at least one of whom shall be appointed from each such State).

(3) **SOUTH ATLANTIC COUNCIL.**—The South Atlantic Fishery Management Council shall consist of the States of North Carolina, South Carolina, Georgia, and Florida and shall have authority over the fisheries in the Atlantic Ocean seaward of such States. The South Atlantic Council shall have 13 voting members, including 8 appointed by the Secretary pursuant to subsection (b) (1) (C) (at least one of whom shall be appointed from each such State).

(4) **CARIBBEAN COUNCIL.**—The Caribbean Fishery Management Council shall consist of the Virgin Islands and the Commonwealth of Puerto Rico and shall have authority over the fisheries in the Caribbean Sea and Atlantic Ocean seaward of such States. The Caribbean Council shall have 7 voting members, including 4 appointed by the Secretary pursuant to subsection (b) (1) (C) (at least one of whom shall be appointed from each such State).

(5) **GULF COUNCIL.**—The Gulf of Mexico Fishery Management Council shall consist of the States of Texas, Louisiana, Mississippi, Alabama, and Florida and shall have authority over the fisheries in the Gulf of Mexico seaward of such States. The Gulf Council shall have 17 voting members, including 11 appointed by the Secretary pursuant to subsection (b) (1) (C) (at least one of whom shall be appointed from each such State).

(6) **PACIFIC COUNCIL.**—The Pacific Fishery Management Council shall consist of the States of California, Oregon, Washington, and Idaho and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Pacific Council shall have 13 voting members, including 8 appointed by the

Secretary pursuant to subsection (b)(1)(C) (at least one of whom shall be appointed from each such State).

(7) **NORTH PACIFIC COUNCIL.**—The North Pacific Fishery Management Council shall consist of the States of Alaska, Washington, and Oregon and shall have authority over the fisheries in the Arctic Ocean, Bering Sea, and Pacific Ocean seaward of Alaska. The North Pacific Council shall have 11 voting members, including 7 appointed by the Secretary pursuant to subsection (b)(1)(C) (5 of whom shall be appointed from the State of Alaska and 2 of whom shall be appointed from the State of Washington).

(8) **WESTERN PACIFIC COUNCIL.**—The Western Pacific Fishery Management Council shall consist of the State of Hawaii, American Samoa, and Guam and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Western Pacific Council shall have 11 voting members, including 7 appointed by the Secretary pursuant to subsection (b)(1)(C) (at least one of whom shall be appointed from each such State).

Each Council shall reflect the expertise and interest of the several constituent States in the ocean area over which such Council is granted authority.

(b) **VOTING MEMBERS.**—(1) The voting members of each Council shall be:

(A) The principal State official with marine fishery management responsibility and expertise in each constituent State, who is designated as such by the Governor of the State, so long as the official continues to hold such position, or the designee of such official.

(B) The regional director of the National Marine Fisheries Service for the geographic area concerned, or his designee, except that if two such directors are within such geographical area, the Secretary shall designate which of such directors shall be the voting member.

(C) The members required to be appointed by the Secretary shall be appointed by the Secretary from a list of qualified individuals submitted by the Governor of each applicable constituent State. With respect to the initial such appointments, such Governors shall submit such lists to the Secretary as soon as practicable, not later than 45 days after the date of the enactment of this Act. As used in this subparagraph, (i) the term "list of qualified individuals" shall include the names (including pertinent biographical data) of not less than three such individuals for each applicable vacancy, and (ii) the term "qualified individual" means an individual who is knowledgeable or experienced with regard to the management, conservation, or recreational or commercial harvest, of the fishery resources of the geographical area concerned.

(2) Each voting member appointed to a Council pursuant to paragraph (1)(C) shall serve for a term of 3 years; except that, with respect to the members initially so appointed, the Secretary shall designate up to one-third thereof to serve for a term of 1 year, up to one-third thereof to serve for a term of 2 years, and the remaining such members to serve for a term of 3 years.

(3) Successors to the voting members of any Council shall be appointed in the same manner as the original voting members. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term.

"List of qualified individuals."
"Qualified individual."

Term.

(c) **NONVOTING MEMBERS.**—(1) The nonvoting members of each Council shall be:

(A) The regional or area director of the United States Fish and Wildlife Service for the geographical area concerned, or his designee.

(B) The commander of the Coast Guard district for the geographical area concerned, or his designee; except that, if two Coast Guard districts are within such geographical area, the commander designated for such purpose by the commandant of the Coast Guard.

(C) The executive director of the Marine Fisheries Commission for the geographical area concerned, if any, or his designee.

(D) One representative of the Department of State designated for such purpose by the Secretary of State, or his designee.

(2) The Pacific Council shall have one additional nonvoting member who shall be appointed by, and serve at the pleasure of, the Governor of Alaska.

(d) **COMPENSATION AND EXPENSES.**—The voting members of each Council, who are not employed by the Federal Government or any State or local government, shall receive compensation at the daily rate for GS-18 of the General Schedule when engaged in the actual performance of duties for such Council. The voting members of each Council, any nonvoting member described in subsection (c) (1) (C), and the nonvoting member appointed pursuant to subsection (c) (2) shall be reimbursed for actual expenses incurred in the performance of such duties.

5 USC 5332 note.

(e) **TRANSACTION OF BUSINESS.**—

(1) A majority of the voting members of any Council shall constitute a quorum, but one or more such members designated by the Council may hold hearings. All decisions of any Council shall be by majority vote of the voting members present and voting.

(2) The voting members of each Council shall select a Chairman for such Council from among the voting members.

(3) Each Council shall meet in the geographical area concerned at the call of the Chairman or upon the request of a majority of its voting members.

(4) If any voting member of a Council disagrees with respect to any matter which is transmitted to the Secretary by such Council, such member may submit a statement to the Secretary setting forth the reasons for such disagreement.

(f) **STAFF AND ADMINISTRATION.**—

(1) Each Council may appoint, and assign duties to, an executive director and such other full- and part-time administrative employees as the Secretary determines are necessary to the performance of its functions.

(2) Upon the request of any Council, and after consultation with the Secretary, the head of any Federal agency is authorized to detail to such Council, on a reimbursable basis, any of the personnel of such agency, to assist such Council in the performance of its functions under this Act.

(3) The Secretary shall provide to each Council such administrative and technical support services as are necessary for the effective functioning of such Council.

(4) The Administrator of General Services shall furnish each Council with such offices, equipment, supplies, and services as he is authorized to furnish to any other agency or instrumentality of the United States.

(5) The Secretary and the Secretary of State shall furnish each Council with relevant information concerning foreign fishing and international fishery agreements.

(6) Each Council shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this Act, in accordance with such uniform standards as are prescribed by the Secretary. Each Council shall publish and make available to the public a statement of its organization, practices, and procedures.

(7) The Secretary shall pay—

(A) the compensation and expenses provided for in subsection (d);

(B) appropriate compensation to employees appointed under paragraph (1);

(C) the amounts required for reimbursement of other Federal agencies under paragraphs (2) and (4);

(D) the actual expenses of the members of the committees and panels established under subsection (g); and

(E) such other costs as the Secretary determines are necessary to the performance of the functions of the Councils.

(g) COMMITTEES AND PANELS.—

(1) Each Council shall establish and maintain, and appoint the members of, a scientific and statistical committee to assist it in the development, collection, and evaluation of such statistical, biological, economic, social, and other scientific information as is relevant to such Council's development and amendment of any fishery management plan.

(2) Each Council shall establish such other advisory panels as are necessary or appropriate to assist it in carrying out its functions under this Act.

(h) FUNCTIONS.—Each Council shall, in accordance with the provisions of this Act—

Fishery management plan.

(1) prepare and submit to the Secretary a fishery management plan with respect to each fishery within its geographical area of authority and, from time to time, such amendments to each such plan as are necessary;

Comments.

(2) prepare comments on any application for foreign fishing transmitted to it under section 204(b)(4)(B), and any fishery management plan or amendment transmitted to it under section 304(c)(2);

Public hearings.

(3) conduct public hearings, at appropriate times and in appropriate locations in the geographical area concerned, so as to allow all interested persons an opportunity to be heard in the development of fishery management plans and amendments to such plans, and with respect to the administration and implementation of the provisions of this Act;

Reports.

(4) submit to the Secretary—

(A) a report, before February 1 of each year, on the Council's activities during the immediately preceding calendar year,

(B) such periodic reports as the Council deems appropriate, and

(C) any other relevant report which may be requested by the Secretary;

Review.

(5) review on a continuing basis, and revise as appropriate, the assessments and specifications made pursuant to section 303(a)(3) and (4) with respect to the optimum yield from, and the total allowable level of foreign fishing in, each fishery within its geographical area of authority; and

(6) conduct any other activities which are required by, or provided for in, this Act or which are necessary and appropriate to the foregoing functions.

SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS.

(a) **REQUIRED PROVISIONS.**—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—

16 USC 1853.

(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;

(B) described in this subsection or subsection (b), or both; and

(C) consistent with the national standards, the other provisions of this Act, and any other applicable law;

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interests in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;

(4) assess and specify—

(A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3), and

(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

(5) specify the pertinent data which shall be submitted to the Secretary with respect to 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, and number of hauls.

(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 any fishing vessel of the United States fishing, or wishing to fish, in the fishery conservation zone, or for anadromous species or Continental Shelf fishery resources beyond such zone;

(2) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(3) establish specified limitations on the catch of fish (based on area, species, size, number, weight, sex, incidental catch, total biomass, or other factors), which are necessary and appropriate for the conservation and management of the fishery;

(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;

(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;

(6) establish a system for limiting access to 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

(F) any other relevant considerations; and

(7) prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

(c) **PROPOSED REGULATIONS.**—Any Council may prepare any proposed regulations which it deems necessary and appropriate to carry out any fishery management plan, or any amendment to any fishery management plan, which is prepared by it. Such proposed regulations shall be submitted to the Secretary, together with such plan or amendment, for action by the Secretary pursuant to sections 304 and 305.

(d) **CONFIDENTIALITY OF STATISTICS.**—Any statistics submitted to the Secretary by any person in compliance with any requirement under subsection (a)(5) shall be confidential and shall not be disclosed except when required under court order. The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve such confidentiality, except that the Secretary may release or make public any such statistics in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such statistics.

SEC. 304. ACTION BY THE SECRETARY.

16 USC 1854.

(a) **ACTION BY THE SECRETARY AFTER RECEIPT OF PLAN.**—Within 60 days after the Secretary receives any fishery management plan, or any amendment to any such plan, which is prepared by any Council, the Secretary shall—

(1) review such plan or amendment pursuant to subsection (b); and

(2) notify such Council in writing of his approval, disapproval, or partial disapproval of such plan or amendment.

In the case of disapproval or partial disapproval, the Secretary shall include in such notification a statement and explanation of the Secretary's objections and the reasons therefor, suggestions for improvement, a request to such Council to change such plan or amendment to satisfy the objections, and a request to resubmit the plan or amendment, as so modified, to the Secretary within 45 days after the date on which the Council receives such notification.

(b) **REVIEW BY THE SECRETARY.**—The Secretary shall review any fishery management plan, and any amendment to any such plan, prepared by any Council and submitted to him to determine whether

it is consistent with the national standards, the other provisions of this Act, and any other applicable law. In carrying out such review, the Secretary shall consult with—

- (1) the Secretary of State with respect to foreign fishing; and
- (2) the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea.

(c) **PREPARATION BY THE SECRETARY.**—(1) The Secretary may prepare a fishery management plan, with respect to any fishery, or any amendment to any such plan, in accordance with the national standards, the other provisions of this Act, and any other applicable law, if—

- (A) the appropriate Council fails to develop and submit to the Secretary, after a reasonable period of time, a fishery management plan for such fishery, or any necessary amendment to such a plan, if such fishery requires conservation and management; or
- (B) the Secretary disapproves or partially disapproves any such plan or amendment, and the Council involved fails to change such plan or amendment in accordance with the notification made under subsection (a) (2).

In preparing any such plan or amendment, the Secretary shall consult with the Secretary of State with respect to foreign fishing and with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea.

(2) Whenever, pursuant to paragraph (1), the Secretary prepares a fishery management plan or amendment, the Secretary shall promptly transmit such plan or amendment to the appropriate Council for consideration and comment. Within 45 days after the date of receipt of such plan or amendment, the appropriate Council may recommend, to the Secretary, changes in such plan or amendment, consistent with the national standards, the other provisions of this Act, and any other applicable law. After the expiration of such 45-day period, the Secretary may implement such plan or amendment pursuant to section 305.

(3) Notwithstanding paragraph (1), the Secretary may not include in any fishery management plan, or any amendment to any such plan, prepared by him, a provision establishing a limited access system described in section 303(b) (6), unless such system is first approved by a majority of the voting members, present and voting, of each appropriate Council.

(d) **ESTABLISHMENT OF FEES.**—The Secretary shall by regulation establish the level of any fees which are authorized to be charged pursuant to section 303(b) (1). Such level shall not exceed the administrative costs incurred by the Secretary in issuing such permits.

Regulations.

(e) **FISHERIES RESEARCH.**—The Secretary shall initiate and maintain a comprehensive program of fishery research to carry out and further the purposes, policy, and provisions of this Act. Such program shall be designed to acquire knowledge and information, including statistics, on fishery conservation and management, including, but not limited to, biological research concerning the interdependence of fisheries or stocks of fish, the impact of pollution on fish, the impact of wetland and estuarine degradation, and other matters bearing upon the abundance and availability of fish.

(f) **MISCELLANEOUS DUTIES.**—(1) If any fishery extends beyond the geographical area of authority of any one Council, the Secretary may—

- (A) designate which Council shall prepare the fishery management plan for such fishery and any amendment to such plan; or

(B) may require that the plan and amendment be prepared jointly by the Councils concerned.
No jointly prepared plan or amendment may be submitted to the Secretary unless it is approved by a majority of the voting members, present and voting, of each Council concerned.

(2) The Secretary shall establish the boundaries between the geographical areas of authority of adjacent Councils.

SEC. 305. IMPLEMENTATION OF FISHERY MANAGEMENT PLANS.

(a) **IN GENERAL.**—As soon as practicable after the Secretary—

(1) approves, pursuant to section 304 (a) and (b), any fishery management plan or amendment; or

(2) prepares, pursuant to section 304(c), any fishery management plan or amendment;

the Secretary shall publish in the Federal Register (A) such plan or amendment, and (B) any regulations which he proposes to promulgate to implement such plan or amendment. Interested persons shall be afforded a period of not less than 45 days after such publication within which to submit in writing data, views, or comments on the plan or amendment, and on the proposed regulations.

(b) **HEARING.**—The Secretary may schedule a hearing, in accordance with section 553 of title 5, United States Code, on any fishery management plan, any amendment to any such plan, and any regulations to implement any such plan or amendment. If any such hearing is scheduled, the Secretary may, pending its outcome—

(A) postpone the effective date of the regulations proposed to implement such plan or amendment; or

(B) take such other action as he deems appropriate to preserve the rights or status of any person.

(c) **IMPLEMENTATION.**—The Secretary shall promulgate regulations to implement any fishery management plan or any amendment to any such plan—

(1) after consideration of all relevant matters—

(A) presented to him during the 45-day period referred to in subsection (a), and

(B) produced in any hearing held under subsection (b); and

(2) if he finds that the plan or amendment is consistent with the national standards, the other provisions of this Act, and any other applicable law.

To the extent practicable, such regulations shall be put into effect in a manner which does not disrupt the regular fishing season for any fishery.

(d) **JUDICIAL REVIEW.**—Regulations promulgated by the Secretary under this Act shall be subject to judicial review to the extent authorized by, and in accordance with, chapter 7 of title 5, United States Code, if a petition for such review is filed within 30 days after the date on which the regulations are promulgated; except that (1) section 705 of such title is not applicable, and (2) the appropriate court shall only set aside any such regulation on a ground specified in section 706(2) (A), (B), (C), or (D) of such title.

(e) **EMERGENCY ACTIONS.**—If the Secretary finds that an emergency involving any fishery resources exists, he may—

(1) promulgate emergency regulations, without regard to subsections (a) and (c), to implement any fishery management plan, if such emergency so requires; or

(2) promulgate emergency regulations to amend any regulation which implements any existing fishery management plan, to the extent required by such emergency.

Publication in Federal Register. 16 USC 1855.

Written comments.

Regulations.

5 USC 701 et seq.

Emergency regulations.

Any emergency regulation which changes any existing fishery management plan shall be treated as an amendment to such plan for the period in which such regulation is in effect. Any emergency regulation promulgated under this subsection (A) shall be published in the Federal Register together with the reasons therefor; (B) shall remain in effect for not more than 45 days after the date of such publication, except that any such regulation may be repromulgated for one additional period of not more than 45 days; and (C) may be terminated by the Secretary at any earlier date by publication in the Federal Register of a notice of termination.

Publication in Federal Register.

Publication in Federal Register.

(f) ANNUAL REPORT.—The Secretary shall report to the Congress and the President, not later than March 1 of each year, on all activities of the Councils and the Secretary with respect to fishery management plans, regulations to implement such plans, and all other activities relating to the conservation and management of fishery resources that were undertaken under this Act during the preceding calendar year.

Report to Congress and President.

(g) RESPONSIBILITY OF THE SECRETARY.—The Secretary shall have general responsibility to carry out any fishery management plan or amendment approved or prepared by him, in accordance with the provisions of this Act. The Secretary may promulgate such regulations, in accordance with section 553 of title 5, United States Code, as may be necessary to discharge such responsibility or to carry out any other provision of this Act.

Regulations.

SEC. 306. STATE JURISDICTION.

(a) IN GENERAL.—Except as provided in subsection (b), nothing in this Act shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries. No State may directly or indirectly regulate any fishing which is engaged in by any fishing vessel outside its boundaries, unless such vessel is registered under the laws of such State.

16 USC 1856.

(b) EXCEPTION.—(1) If the Secretary finds, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, that—

Notice and hearing.

(A) the fishing in a fishery, which is covered by a fishery management plan implemented under this Act, is engaged in predominately within the fishery conservation zone and beyond such zone; and

(B) any State has taken any action, or omitted to take any action, the results of which will substantially and adversely affect the carrying out of such fishery management plan;

the Secretary shall promptly notify such State and the appropriate Council of such finding and of his intention to regulate the applicable fishery within the boundaries of such State (other than its internal waters), pursuant to such fishery management plan and the regulations promulgated to implement such plan.

(2) If the Secretary, pursuant to this subsection, assumes responsibility for the regulation of any fishery, the State involved may at any time thereafter apply to the Secretary for reinstatement of its authority over such fishery. If the Secretary finds that the reasons for which he assumed such regulation no longer prevail, he shall promptly terminate such regulation.

SEC. 307. PROHIBITED ACTS.

It is unlawful—

16 USC 1857.

(1) for any person—

(A) to violate any provision of this Act or any regulation or permit issued pursuant to this Act;

(B) to use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, of an applicable permit issued pursuant to this Act;

(C) to violate any provision of, or regulation under, an applicable governing international fishery agreement entered into pursuant to section 201(c);

(D) to refuse to permit any officer authorized to enforce the provisions of this Act (as provided for in section 311) to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this Act or any regulation, permit, or agreement referred to in subparagraph (A) or (C);

(E) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in subparagraph (D);

(F) to resist a lawful arrest for any act prohibited by this section;

(G) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this Act or any regulation, permit, or agreement referred to in subparagraph (A) or (C); or

(H) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section; and

(2) for any vessel other than a vessel of the United States, and for the owner or operator of any vessel other than a vessel of the United States, to engage in fishing—

(A) within the boundaries of any State; or

(B) within the fishery conservation zone, or for any anadromous species or Continental Shelf fishery resources beyond such zone, unless such fishing is authorized by, and conducted in accordance with, a valid and applicable permit issued pursuant to section 204 (b) or (c).

SEC. 308. CIVIL PENALTIES.

16 USC 1858.

(a) **ASSESSMENT OF PENALTY.**—Any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 307 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed \$25,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(b) **REVIEW OF CIVIL PENALTY.**—Any person against whom a civil penalty is assessed under subsection (a) may obtain review thereof in the appropriate court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found

or such penalty imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(c) **ACTION UPON FAILURE TO PAY ASSESSMENT.**—If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(d) **COMPROMISE OR OTHER ACTION BY SECRETARY.**—The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

SEC. 309. CRIMINAL OFFENSES.

(a) **OFFENSES.**—A person is guilty of an offense if he commits any act prohibited by—

- (1) section 307(1) (D), (E), (F), or (H); or
- (2) section 307(2).

(b) **PUNISHMENT.**—Any offense described in subsection (a)(1) is punishable by a fine of not more than \$50,000, or imprisonment for not more than 6 months, or both; except that if in the commission of any such offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any officer authorized to enforce the provisions of this Act (as provided for in section 311), or places any such officer in fear of imminent bodily injury, the offense is punishable by a fine of not more than \$100,000, or imprisonment for not more than 10 years, or both. Any offense described in subsection (a)(2) is punishable by a fine of not more than \$100,000, or imprisonment for not more than 1 year, or both.

(c) **JURISDICTION.**—There is Federal jurisdiction over any offense described in this section.

SEC. 310. CIVIL FORFEITURES.

(a) **IN GENERAL.**—Any fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any fish taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 307 (other than any act for which the issuance of a citation under section 311(c) is sufficient sanction) shall be subject to forfeiture to the United States. All or part of such vessel may, and all such fish shall, be forfeited to the United States pursuant to a civil proceeding under this section.

(b) **JURISDICTION OF COURTS.**—Any district court of the United States which has jurisdiction under section 311(d) shall have jurisdiction, upon application by the Attorney General on behalf of the United States, to order any forfeiture authorized under subsection (a) and any action provided for under subsection (d).

(c) **JUDGMENT.**—If a judgment is entered for the United States in a civil forfeiture proceeding under this section, the Attorney General may seize any property or other interest declared forfeited to the United States, which has not previously been seized pursuant to this Act or for which security has not previously been obtained under subsection (d). The provisions of the customs laws relating to—

- (1) the disposition of forfeited property,
- (2) the proceeds from the sale of forfeited property,

(3) the remission or mitigation of forfeitures, and
 (4) the compromise of claims,
 shall apply to any forfeiture ordered, and to any case in which forfeiture is alleged to be authorized, under this section, unless such provisions are inconsistent with the purposes, policy, and provisions of this Act. The duties and powers imposed upon the Commissioner of Customs or other persons under such provisions shall, with respect to this Act, be performed by officers or other persons designated for such purpose by the Secretary.

(d) PROCEDURE.—(1) Any officer authorized to serve any process in rem which is issued by a court having jurisdiction under section 311 (d) shall—

(A) stay the execution of such process; or
 (B) discharge any fish seized pursuant to such process;
 upon the receipt of a satisfactory bond or other security from any person claiming such property. Such bond or other security shall be conditioned upon such person (i) delivering such property to the appropriate court upon order thereof, without any impairment of its value, or (ii) paying the monetary value of such property pursuant to an order of such court. Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court.

(2) Any fish seized pursuant to this Act may be sold, subject to the approval and direction of the appropriate court, for not less than the fair market value thereof. The proceeds of any such sale shall be deposited with such court pending the disposition of the matter involved.

(e) REBUTTABLE PRESUMPTION.—For purposes of this section, it shall be a rebuttable presumption that all fish found on board a fishing vessel which is seized in connection with an act prohibited by section 307 were taken or retained in violation of this Act.

SEC. 311. ENFORCEMENT.

16 USC 1861.

(a) RESPONSIBILITY.—The provisions of this Act shall be enforced by the Secretary and the Secretary of the department in which the Coast Guard is operating. Such Secretaries may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency, including all elements of the Department of Defense, and of any State agency, in the performance of such duties. Such Secretaries shall report semiannually, to each committee of the Congress listed in section 203(b) and to the Councils, on the degree and extent of known and estimated compliance with the provisions of this Act.

Reports to congressional committees.

(b) POWERS OF AUTHORIZED OFFICERS.—Any officer who is authorized (by the Secretary, the Secretary of the department in which the Coast Guard is operating, or the head of any Federal or State agency which has entered into an agreement with such Secretaries under subsection (a)) to enforce the provisions of this Act may—

- (1) with or without a warrant or other process—
 - (A) arrest any person, if he has reasonable cause to believe that such person has committed an act prohibited by section 307;
 - (B) board, and search or inspect, any fishing vessel which is subject to the provisions of this Act;
 - (C) seize any fishing vessel (together with its fishing gear, furniture, appurtenances, stores, and cargo) used or employed

in, or with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of this Act;

(D) seize any fish (wherever found) taken or retained in violation of any provision of this Act; and

(E) seize any other evidence related to any violation of any provision of this Act;

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

(3) exercise any other lawful authority.

(c) **ISSUANCE OF CITATIONS.**—If any officer authorized to enforce the provisions of this Act (as provided for in this section) finds that a fishing vessel is operating or has been operated in violation of any provision of this Act, such officer may, in accordance with regulations issued jointly by the Secretary and the Secretary of the department in which the Coast Guard is operating, issue a citation to the owner or operator of such vessel in lieu of proceeding under subsection (b). If a permit has been issued pursuant to this Act for such vessel, such officer shall note the issuance of any citation under this subsection, including the date thereof and the reason therefor, on the permit. The Secretary shall maintain a record of all citations issued pursuant to this subsection.

(d) **JURISDICTION OF COURTS.**—The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this Act. In the case of Guam, and any Commonwealth, territory, or possession of the United States in the Pacific Ocean, the appropriate court is the United States District Court for the District of Guam, except that in the case of American Samoa, the appropriate court is the United States District Court for the District of Hawaii. Any such court may, at any time—

(1) enter restraining orders or prohibitions;

(2) issue warrants, process in rem, or other process;

(3) prescribe and accept satisfactory bonds or other security;

and

(4) take such other actions as are in the interest of justice.

(e) **DEFINITION.**—For purposes of this section—

(1) The term “provisions of this Act” includes (A) any regulation or permit issued pursuant to this Act, and (B) any provision of, or regulation issued pursuant to, any international fishery agreement under which foreign fishing is authorized by section 201 (b) or (c), with respect to fishing subject to the exclusive fishery management authority of the United States.

(2) The term “violation of any provision of this Act” includes (A) the commission of any act prohibited by section 307, and (B) the violation of any regulation, permit, or agreement referred to in paragraph (1).

SEC. 312. EFFECTIVE DATE OF CERTAIN PROVISIONS.

Sections 307, 308, 309, 310, and 311 shall take effect March 1, 1977.

16 USC 1857
note.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. EFFECT ON LAW OF THE SEA TREATY.

If the United States ratifies a comprehensive treaty, which includes provisions with respect to fishery conservation and management jurisdiction, resulting from any United Nations Conference on the Law of the Sea, the Secretary, after consultation with the Secretary of State, may promulgate any amendment to the regulations promulgated under this Act if such amendment is necessary and appropriate to

16 USC 1881.

conform such regulations to the provisions of such treaty, in anticipation of the date when such treaty shall come into force and effect for, or otherwise be applicable to, the United States.

SEC. 402. REPEALS.

(a) The Act of October 14, 1966 (16 U.S.C. 1091-1094), is repealed as of March 1, 1977.

(b) The Act of May 20, 1964 (16 U.S.C. 1081-1086), is repealed as of March 1, 1977.

SEC. 403. FISHERMEN'S PROTECTIVE ACT AMENDMENTS.

(a) AMENDMENTS.—The Act of August 27, 1954 (22 U.S.C. 1972), is amended—

(1) by amending section 2 thereof to read as follows:

“Sec. 2. If—

“(1) any vessel of the United States is seized by a foreign country on the basis of claims in territorial waters or the high seas which are not recognized by the United States; or

“(2) any general claim of any foreign country to exclusive fishery management authority is recognized by the United States, and any vessel of the United States is seized by such foreign country on the basis of conditions and restrictions under such claim, if such conditions and restrictions—

“(A) are unrelated to fishery conservation and management,

“(B) fail to consider and take into account traditional fishing practices of vessels of the United States,

“(C) are greater or more onerous than the conditions and restrictions which the United States applies to foreign fishing vessels subject to the exclusive fishery management authority of the United States (as established in title I of the Fishery Conservation and Management Act of 1976), or

“(D) fail to allow fishing vessels of the United States equitable access to fish subject to such country's exclusive fishery management authority;

and there is no dispute as to the material facts with respect to the location or activity of such vessel at the time of such seizure, the Secretary of State shall immediately take such steps as are necessary—

“(i) for the protection of such vessel and for the health and welfare of its crew;

“(ii) to secure the release of such vessel and its crew; and

“(iii) to determine the amount of any fine, license, fee, registration fee, or other direct charge reimbursable under section 3(a) of this Act.”; and

(2) by amending section 3(a) thereof by inserting immediately before the last sentence thereof the following new sentence: “For purposes of this section, the term ‘other direct charge’ means any levy, however characterized or computed (including, but not limited to, any computation based on the value of a vessel or the value of fish or other property on board a vessel), which is imposed in addition to any fine, license fee, or registration fee.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) (1) shall take effect March 1, 1977. The amendment made by subsection (a) (2) shall apply with respect to seizures of vessels of the United States occurring on or after December 31, 1974.

SEC. 404. MARINE MAMMAL PROTECTION ACT AMENDMENT.

(a) AMENDMENT.—Section 3(15)(B) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(15)(B)) is amended by striking

Ante, p. 331.

Infra.
22 USC 1973.

22 USC 1972
note.
22 USC 1973
note.

out "the fisheries zone established pursuant to the Act of October 14, 1966." and inserting in lieu thereof "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."

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect March 1, 1977.

16 USC 1362
note.

SEC. 405. ATLANTIC TUNAS CONVENTION ACT AMENDMENT.

(a) **AMENDMENT.**—Section 2(4) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971(4)) is amended by striking out "the fisheries zone established pursuant to the Act of October 14, 1966 (80 Stat. 908; 16 U.S.C. 1091-1094)," and inserting in lieu thereof "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."

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect March 1, 1977.

16 USC 971 note.

SEC. 406. AUTHORIZATION OF APPROPRIATIONS.

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

16 USC 1882.

- (1) \$5,000,000 for the fiscal year ending June 30, 1976.
- (2) \$5,000,000 for the transitional fiscal quarter ending September 30, 1976.
- (3) \$25,000,000 for the fiscal year ending September 30, 1977.
- (4) \$30,000,000 for the fiscal year ending September 30, 1978.

Approved April 13, 1976.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 94-445 (Comm. on Merchant Marine and Fisheries) and No. 94-948 (Comm. of Conference).

SENATE REPORTS: No. 94-416 (Comm. on Commerce), No. 94-459 (Comm. on Foreign Relations), and No. 94-515 (Comm. on Armed Services) all accompanying S. 961, and No. 94-711 (Comm. of Conference).

CONGRESSIONAL RECORD:

Vol. 121 (1975): Oct. 9, considered and passed House.

Dec. 19, S. 961 considered in Senate.

Vol. 122 (1976): Jan. 19-22, 27, S. 961 considered in Senate.

Jan. 28, considered and passed Senate, amended, in lieu of S. 961.

Mar. 29, Senate agreed to conference report.

Mar. 30, House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS:

Vol. 12, No. 16 (1976): Apr. 13, Presidential statement.

**1980 Amendments to the Fishery Conservation
and Management Act of 1976***

* Pub. L. 96-561, 94 Stat. 3296 (1980).

**PART C—AMENDMENTS TO THE FISHERY CONSERVATION AND
MANAGEMENT ACT OF 1976**

**SUBPART 1—FOREIGN FISHING IN FISHERIES SUBJECT TO THE EXCLUSIVE
FISHERY MANAGEMENT AUTHORITY OF THE UNITED STATES**

SEC. 239. FOREIGN FISHING.

Section 201(d) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1821(d)) is amended to read as follows:

Definitions.

"(d) TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING.—(1) As used in this subsection—

"(A) The term 'base harvest' means, with respect to any United States fishery, the total allowable level of foreign fishing during the 1979 harvesting season.

"(B) The term 'harvesting season' means the period established under this Act by the Secretary during which foreign fishing is permitted within a United States fishery. For purposes of this subsection, a harvesting season is designated by the calendar year in which the last day of the harvesting season occurs, regardless whether fishing is not permitted on that day due to emergency or other closure of the fishery.

"(C) The term 'calculation factor' means, with respect to each United States fishery, 15 percent of the base harvest.

"(D) The term 'reduction factor amount' means, with respect to each United States fishery, for any harvesting season after the 1980 harvesting season—

"(i) an amount equal to 15 percent of the base harvest for that fishery, if, in addition to the level of harvest by vessels of the United States in the designated preceding harvesting season for the fishery, such vessels harvest, in one or more harvesting seasons, not less than 75 percent of the calculation factor;

"(ii) an amount equal to 10 percent of the base harvest for the fishery, if, in addition to the level of harvest by vessels of the United States in the designated preceding harvesting season for the fishery, such vessels harvest, in one or more harvesting seasons, not less than 50 percent, but less than 75 percent, of the calculation factor; or

"(iii) an amount equal to 5 percent of the base harvest for the fishery, if, in addition to the level of harvest by vessels of the United States in the designated previous harvesting season for the fishery, such vessels harvest, in one or more harvesting seasons, not less than 25 percent, but less than 50 percent, of the calculation factor.

For purposes of this paragraph, the term 'designated preceding harvest season' means—

"(I) until a reduction factor amount is first achieved under this paragraph with respect to the fishery concerned, the 1979 harvesting season, and

"(II) after such amount is first achieved, the most recent harvesting season in which a reduction factor amount was achieved.

"(E) The term 'annual fishing level' for any United States fishery during any harvesting season after the 1980 harvesting season is the base harvest for the fishery reduced by—

"(i) an amount equal to the reduction factor amount for that harvesting season; and

“(ii) an amount equal to the increased level of harvest by vessels of the United States over the level achieved by such vessels in the 1979 harvesting season for the fishery.

“(F) The term ‘United States fishery’ means any fishery subject to the exclusive fishery management authority of the United States.

“(2) The total allowable level of foreign fishing, if any, with respect to any United States fishery for each harvesting season after the 1980 harvesting season shall be—

Foreign fishing, total allowable level.

“(A) the level representing that portion of the optimum yield of such fishery that will not be harvested by vessels of the United States as determined in accordance with the provisions of this Act (other than those relating to the determination of annual fishing levels), or

“(B) the annual fishing level determined pursuant to paragraph (3) for the harvesting season.

“(3) For each United States fishery, the appropriate fishery management council, on a timely basis, may determine and certify to the Secretary of State and the Secretary the annual fishing level for that fishery for each harvesting season after the 1980 harvesting season.

Annual fishing level.

“(4) If with respect to any harvesting season for any United States fishery for which the total allowable level of foreign fishing is determined under paragraph (2)(B), the Secretary, in consultation with the Secretary of State, approves the determination by any appropriate fishery management council that any portion of the optimum yield for that harvesting season will not be harvested by vessels of the United States, the Secretary of State, in accordance with subsection (e), shall allocate such portion for use during that harvesting season by foreign fishing vessels; except that if—

Allowable levels, allocation.

“(A) the making available of such portion (or any part thereof) during that harvesting season is determined to be detrimental to the development of the United States fishing industry; and

“(B) such portion or part will be available for harvest in the immediately succeeding harvesting season, as determined on the basis of the best available scientific information;

Conditions.

then such portion or part shall be allocated for use by foreign fishing vessels in such succeeding harvesting season. The determinations required to be made under subparagraphs (A) and (B) of the preceding sentence shall be made by the Secretary in consultation with the Secretary of State and on the basis of any recommendation of any appropriate fishery management council.”.

SEC. 231. ALLOCATION OF ALLOWABLE LEVELS OF FOREIGN FISHING.

(a) AMENDMENTS.—The last sentence of section 201(e)(1) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1821(e)(1)) is amended to read as follows: “All such determinations shall be made by the Secretary of State and the Secretary on the basis of—

“(A) whether, and to what extent, such nations impose tariff barriers or nontariff barriers on the importation, or otherwise restrict the market access, of United States fish or fishery products;

“(B) whether, and to what extent, such nations are cooperating with the United States in the advancement of existing and new opportunities for fisheries trade, particularly through the purchase of fish or fishery products from United States processors or from United States fishermen;

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

“(D) whether, and to what extent, such nations require the fish harvested from the fishery conservation zone for their domestic consumption;

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

“(F) whether, and to what extent, the fishing vessels of such nations have traditionally engaged in fishing in such fishery;

“(G) whether, and to what extent, such nations are cooperating with the United States in, and making substantial contributions to fishery research and the identification of fishery resources; and

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

16 USC 1821
note.

Ante, p. 3296.

(b) **TAKING EFFECT OF AMENDMENTS.**—The amendments made by subsection (a) shall apply with respect to the 1981 harvesting season and harvesting seasons thereafter (as defined in section 201(d)(1) of the Fishery Conservation and Management Act of 1976, as amended by section 301).

SEC. 232. PERMIT FEES.

(a) **INTERIM FEES.**—(1) Effective with respect to permits issued under section 204(b) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1824(b)(10)) for 1981, paragraph (10) of such section is amended by striking out the last sentence thereof and inserting in lieu thereof the following: “Such fees shall be formulated so as to ensure that the receipts resulting from the payment of the fees under this paragraph for permits issued for 1981 are not less than an amount equal to 7 percent of the ex vessel value of the total harvest by foreign fishing vessels in the fishery conservation zone during 1979. The fees collected by the Secretary under this paragraph for permits issued for 1981 shall be transferred to the fisheries loan fund established under section 4 of the Fish and Wildlife Act of 1956 (16 U.S.C. 742c) and used for the purpose of making loans therefrom, but only to the extent and in amounts provided for in advance in appropriation Acts.”

(b) **PERMANENT FEES.**—Effective with respect to permits issued under section 204(b) of such Act of 1976 after 1981, paragraph (10) of such section is amended to read as follows—

“(10) **FEES.**—Fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit is issued pursuant to this subsection. The Secretary, in consultation with the Secretary of State, shall establish a schedule of such fees which shall apply nondiscriminatorily to each foreign nation. The fees imposed under this paragraph shall be at least in an amount sufficient to return to the United States an amount which bears to the total cost of carrying out the provisions of this Act (including, but not limited to, fishery conservation and management, fisheries research, administration, and enforcement, but excluding costs for observers covered by surcharges under section 201(i)(4)) during each fiscal year the same ratio as the aggregate quantity of fish harvested by foreign fishing

Schedule.

Post p. 3299.

vessels within the fishery conservation zone during the preceding year bears to the aggregate quantity of fish harvested by both foreign and domestic fishing vessels within such zone and the territorial waters of the United States during such preceding year. The amount collected by the Secretary under this paragraph shall be transferred to the fisheries loan fund established under section 4 of the Fish and Wildlife Act of 1956 (16 U.S.C. 742c) for so long as such fund exists and used for the purpose of making loans therefrom, but only to the extent and in amounts provided for in advance in appropriation Acts."

SEC. 233. FISHERY DEVELOPMENT OBJECTIVES.

Section 2(b)(6) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801(b)(6)) is amended by inserting immediately before the period at the end thereof the following: ", and to that end, to ensure that optimum yield determinations promote such development".

SEC. 234. FISHERY MANAGEMENT COUNCIL TRAVEL FUNDS.

The second sentence of section 302(d) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852(d)) is amended by striking out the period and inserting in lieu thereof the following: ", and other nonvoting members may be reimbursed for actual expenses".

SEC. 235. NOTICE OF AVAILABILITY OF MANAGEMENT PLANS.

Section 305(a) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1855(a)) is amended by inserting "a notice of availability of" immediately after "Federal Register (A)".

SUBPART 2—FULL OBSERVER COVERAGE PROGRAM

SEC. 236. ESTABLISHMENT OF FULL OBSERVER COVERAGE PROGRAM.

Section 201 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1821) is amended by adding at the end thereof the following new subsection:

"(i) **FULL OBSERVER COVERAGE PROGRAM.**—(1) Except as provided in paragraph (2), the Secretary shall establish a program under which a United States observer will be stationed aboard each foreign fishing vessel while that vessel is engaged in fishing within the fishery conservation zone.

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

Waiver.

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

"(B) with respect to any foreign fishing vessel while it is engaged in fishing within the fishery conservation zone—

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

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

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

“(3) United States observers, while aboard foreign fishing vessels, shall carry out such scientific and other functions as the Secretary deems necessary or appropriate to carry out the purposes of this Act.

Ante, p. 3298.

“(4) In addition to any fee imposed under section 204(b)(10) of this Act and section 10(e) of the Fishermen’s Protective Act of 1967 (22 U.S.C. 1980(e)) with respect to foreign fishing for any year after 1980, the Secretary shall impose, with respect to each foreign fishing vessel for which a permit is issued under such section 204, a surcharge in an amount sufficient to cover all the costs of providing a United States observer aboard that vessel. The failure to pay any surcharge imposed under this paragraph shall be treated by the Secretary as a failure to pay the permit fee for such vessel under section 204(b)(10). All surcharges collected by the Secretary under this paragraph shall be deposited in the Foreign Fishing Observer Fund established by paragraph (5).

Foreign Fishing Observer Fund Establishment.

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

16 USC 1821 note.

SEC. 237. EFFECTIVE DATE.

The amendment made by section 236 shall take effect October 1, 1981, and shall apply with respect to permits issued under section 204 of the Fishery Conservation and Management Act of 1976 after December 31, 1981.

16 USC 1824.

16 USC 1801 note.

SEC. 238. SHORT TITLE.

(a) Effective 15 days after the date of enactment of this title, section 1 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801) is amended to read as follows: “That this Act may be cited as the ‘Magnuson Fishery Conservation and Management Act’.”

(b) Effective 15 days after the date of enactment of this title, all references to the Fishery Conservation and Management Act of 1976 shall be redesignated as references to the Magnuson Fishery Conservation and Management Act.

**Foreign Fishing Processing in Internal Waters Act
of 1982***

* Pub. L. 97-191, 96 Stat. 107 (1982).

FOREIGN FISHING PROCESSING IN
INTERNAL WATERS

An Act to regulate the operation of foreign fish processing vessels within State waters.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 306 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1856) is amended by adding at the end thereof the following new subsection:

Foreign fish processing vessels within State waters, regulation.

“(c) EXCEPTION REGARDING FOREIGN FISH PROCESSING IN INTERNAL WATERS.—(1) A foreign fishing vessel may engage in fish processing within the internal waters of a State if, and only if—

“(A) the vessel is qualified for purposes of this paragraph pursuant to paragraph (4)(C); and

“(B) the owner or operator of the vessel applies to the Governor of the State for, and (subject to paragraph (2)) is granted, permission for the vessel to engage in such processing.

“(2) The Governor of a State may not grant permission for a foreign fishing vessel to engage in fish processing under paragraph (1)(B) if he determines that fish processors within the State have adequate capacity, and will utilize such capacity, to process all of the United States harvested fish from the fishery concerned that are landed in the State.

“(3) Nothing in this subsection may be construed as relieving a foreign fishing vessel from the duty to comply with all applicable Federal and State laws while operating within the internal waters of a State incident to permission obtained under paragraph (1)(B).

“(4) For purposes of this subsection—

“(A) The term ‘fish processing’ includes, in addition to processing, the performance of any other activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, or transportation.

“(B) The phrase ‘internal waters of a State’ means all waters within the boundaries of a State except those seaward of the baseline from which the territorial sea is measured.

“(C) A foreign fishing vessel shall be treated as qualified for purposes of paragraph (1) if the foreign nation under which it is flagged will be a party to (i) a governing international fishery agreement or (ii) a treaty described in section 201(b) of this Act (16 U.S.C. 1821(b)) during the time the vessel will engage in the fish processing for which permission is sought under paragraph (1)(B).”

Definitions.

SEC. 2. Section 307(2) of such Act of 1976 (16 U.S.C. 1857(2)) is amended—

(1) by striking out “in fishing—” and inserting in lieu thereof a hyphen;

(2) by amending subparagraph (A) by inserting “in fishing” immediately after “(A)”, and by striking out “or”;

(3) by amending subparagraph (B) by inserting "in fishing" immediately after "(B)", and by striking out "and" after the semicolon and inserting in lieu thereof "or"; and

(4) by adding at the end thereof the following new subparagraph:

"(C) except as permitted under section 306(c), in fish processing (as defined in paragraph (4)(A) of such section) within the internal waters of a State (as defined in paragraph (4)(B) of such section); and".

Sec. 3. This Act shall take effect on June 1, 1982.

Effective
date.
16 USC 1856
note.

Approved June 1, 1982.

LEGISLATIVE HISTORY—S. 2535:

CONGRESSIONAL RECORD, Vol. 128 (1982):

May 17, considered and passed Senate.

May 25, considered and passed House, amended.

May 27, Senate concurred in House amendments.

**Fishery Conservation and Management Improvement
Act of 1983***

* Pub. L. 97-453, 96 Stat. 2481 (1983).

FISHERY CONSERVATION AND MANAGEMENT
IMPROVEMENT

For Legislative History of Act, see p. 4320

An Act to improve fishery conservation and management.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Fishery
conservation and
management,
improvement.

SECTION 1. AMENDMENT REFERENCE.

Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or subsection, the reference shall be considered to be made to a section or subsection of the Act entitled "An Act to provide for the conservation and management of the fisheries, and for other purposes", approved April 13, 1976 (90 Stat. 331 et seq., 16 U.S.C. 1801 et seq.).

SEC. 2. FOREIGN FISHING.

(a) Section 201 (16 U.S.C. 1821) is amended as follows:

(1) Subsection (c)(2)(D) is amended to read as follows:

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

(2) Subsection (c)(4) is amended—

(A) by striking out "and" at the end of subparagraph (B);

(B) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof "; and"; and

(C) by adding at the end thereof the following new subparagraph:

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

(3) The first sentence of subsection (d)(4) is amended by striking out "shall be allocated" in the matter following subparagraph (B) and inserting in lieu thereof "may be allocated".

(4) Subsection (e)(1) is amended to read as follows:

"(e) ALLOCATION OF ALLOWABLE LEVEL.—(1)(A) The Secretary of State, in cooperation with the Secretary, shall determine the allocation among foreign nations of the total allowable level of foreign fishing which is permitted with respect to each fishery subject to the exclusive fishery management authority of the United States.

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

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

on which each apportionment is made under this subparagraph shall be stated in writing by the Secretary of State.

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

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

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

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

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

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

“(ii) whether, and to what extent, such nation is cooperating with the United States in the advancement of existing and new opportunities for fisheries trade, particularly through the purchase of fish or fishery products from United States processors or from United States fishermen;

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

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

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

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

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

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

(5)(A) Subsection (i) is amended—

(i) by amending paragraph (3) to read as follows:

“(3) Observers, while stationed aboard foreign fishing vessels, shall carry out such scientific, compliance monitoring, and other functions as the Secretary deems necessary or appropriate to carry out the purposes of this Act; and shall cooperate in carrying out

such other scientific programs relating to the conservation and management of living resources as the Secretary deems appropriate.”; and

(ii) by adding at the end thereof the following new paragraph:

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

Supplementary
observer
program.

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

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

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

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

(6) Such section is further amended by adding at the end thereof the following new subsection:

“(j) RECREATIONAL FISHING.—Notwithstanding any other provision of this title, foreign fishing vessels which are not operated for profit may engage in recreational fishing within the fishery conservation zone and the waters within the boundaries of a State subject to obtaining such permits, paying such reasonable fees, and complying with such conditions and restrictions as the Secretary and the Governor of the State (or his designee) shall impose as being necessary or appropriate to insure that the fishing activity of such foreign vessels within such zone or waters, respectively, is consistent with all applicable Federal and State laws and any applicable fishery management plan implemented under section 305. The Secretary shall consult with the Secretary of State and the Secretary of the Department in which the Coast Guard is operating in formulating the conditions and restrictions to be applied by the Secretary under the authority of this subsection.”

Post, p. 2490.

(b) The amendments made by subsection (a)(1) and (5)(A)(ii) shall take effect January 1, 1984.

Effective date.
16 USC 1821
note.

SEC. 3. FOREIGN FISHING PERMITS.

Section 204(b) (16 U.S.C. 1824(b)) is amended—

(1) by inserting “hold” immediately before “capacity” in paragraph (3)(B);

(2) by striking out “and shall be set forth under the name of each Council to which it will be transmitted for comment” in that portion of paragraph (4) which precedes subparagraph (A);

(3) by striking out subparagraphs (B) and (C) of paragraph (4) and inserting in lieu thereof the following:

“(B) a copy of the application to the Secretary of the department in which the Coast Guard is operating; and

“(C) a copy or a summary of the application to the appropriate council, upon its request.”; and

(4) by striking out “After receipt of an application transmitted under paragraph (4)(B), each appropriate Council shall” in paragraph (5) and inserting in lieu thereof “After receiving a copy or summary of an application under paragraph (4)(C), the Council may”.

SEC. 4. NATIONAL STANDARDS.

Section 301(b) (16 U.S.C. 1851(b)) is amended to read as follows:
“(b) The Secretary shall establish advisory guidelines (which shall not have the force and effect of law), based on the national standards, to assist in the development of fishery management plans.”.

SEC. 5. REGIONAL FISHERY MANAGEMENT COUNCIL ORGANIZATION AND FUNCTIONS.

Section 302 (16 U.S.C. 1852) is amended as follows:

(1) Subsection (a) is amended—

(A) by striking out “pursuant to subsection (b)(1)(C)” each place it appears therein and inserting in lieu thereof “in accordance with subsection (b)(2)”;

(B) by amending paragraph (8) to read as follows:

“(8) WESTERN PACIFIC COUNCIL.—The Western Pacific Fishery Management Council shall consist of the States of Hawaii, American Samoa, Guam, and the Northern Mariana Islands and shall have authority over the fisheries in the Pacific Ocean seaward of such States and of the Commonwealths, territories, and possessions of the United States in the Pacific Ocean area. The Western Pacific Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each of the following States: Hawaii, American Samoa, Guam, and the Northern Mariana Islands).”.

(2) Subsection (b) is amended—

(A) by amending paragraph (1)(C) to read as follows:

“(C) The members required to be appointed by the Secretary in accordance with subsection (b)(2).”;

(B) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(C) by inserting immediately after paragraph (1) the following new paragraph:

“(2)(A) The members of each Council required to be appointed by the Secretary must be individuals who are knowledgeable or experienced with regard to the management, conservation, or recreational or commercial harvest of the fishery resources of the geographical area concerned.

“(B) The Secretary shall appoint the members of each Council from a list of individuals submitted by the Governor of each applicable constituent State. Each such list shall include the names and pertinent biographical data of not less than three individuals for each applicable vacancy. The Secretary shall review each list submitted by a Governor to ascertain if the individuals on the list are qualified for the vacancy on the basis of the required knowledge or experience required by subparagraph (A). If the Secretary determines that any individual is not qualified, he shall notify the appropriate Governor of that determination. The Governor shall then submit a revised list or resubmit the original list with an additional explanation of the qualifications of the individual in question.

“(C) Whenever the Secretary makes an appointment to a Council, he shall make a public announcement of such appointment not less than 45 days before the first day on which the individual is to take office as a member of the Council.”;

(D) by striking out “pursuant to paragraph (1)(C)” in subsection (b)(3) (as redesignated by subparagraph (B)) and

Members, qualifications.

List of applicants.

Announcement of appointment.

inserting in lieu thereof "by the Secretary in accordance with subsection (b)(2)"; and

(E) by adding at the end thereof the following new paragraph:

"(5) The Secretary may remove for cause any member of a Council required to be appointed by the Secretary in accordance with subsection (b)(2) if the Council concerned first recommends removal by not less than two-thirds of the members who are voting members. A removal recommendation of a Council must be in writing and accompanied by a statement of the reasons upon which the recommendation is based."

Removal of member.

(3) Subsection (f)(6) is amended by inserting after the first sentence thereof the following new sentence: "The procedures of a Council, and of its scientific and statistical committee and advisory panels established under subsection (g), must be consistent with the procedural guidelines set forth in subsection (i)(2)."

(4) Subsection (h) is amended as follows:

(A) Paragraph (1) is amended by inserting "that requires conservation and management" immediately after "authority".

(B) Paragraph (2) is amended by striking out "204(b)(4)(B)" and inserting in lieu thereof "204(b)(4)(C)".

(C) Paragraph (3) is amended by inserting immediately before the semicolon at the end thereof the following: "(and for purposes of this paragraph, the term 'geographical area concerned' may include an area under the authority of another Council if the fish in the fishery concerned migrate into, or occur in, that area or if the matters being heard affect fishermen of that area; but not unless such other Council is first consulted regarding the conduct of such hearings within its area)".

(D) Paragraph (4) is amended to read as follows:

"(4) submit to the Secretary such periodic reports as the Council deems appropriate, and any other relevant report which may be requested by the Secretary;"

Report.

(5) Such section is further amended by adding at the end thereof the following new subsection:

"(i) PROCEDURAL MATTERS.—(1) The Federal Advisory Committee Act (5 U.S.C. App. 1) shall not apply to the Councils or to the scientific and statistical committees or advisory panels of the Councils.

5 USC app.

"(2) The following guidelines apply with respect to the conduct of business at meetings of a Council, and of the scientific and statistical committee and advisory panels of a Council:

Meetings, guidelines.

"(A) Unless closed in accordance with paragraph (3), each regular meeting and each emergency meeting shall be open to the public.

"(B) Emergency meetings shall be held at the call of the chairman or equivalent presiding officer.

"(C) Timely public notice of each regular meeting and each emergency meeting, including the time, place, and agenda of the meeting, shall be published in local newspapers in the major fishing ports of the Council's region (and in other major fishing ports having a direct interest in the affected fishery) and such notice may be given by such other means as will result in wide

Publication in Federal Register.

publicity. Timely notice of each regular meeting shall also be published in the Federal Register.

“(D) Interested persons shall be permitted to present oral or written statements regarding the matters on the agenda at meetings.

“(E) Minutes of each meeting shall be kept and shall contain a record of the persons present, an accurate description of matters discussed and conclusions reached, and copies of all statements filed.

Public availability. 16 USC 1853.

“(F) Subject to the procedures established by the Council under paragraph (4), and the guidelines prescribed by the Secretary under section 303(d), relating to confidentiality, the administrative record, including minutes required under subparagraph (E), of each meeting, and records or other documents which were made available to or prepared for or by the Council, committee, or panel incident to the meeting, shall be available for public inspection and copying at a single location in the offices of the Council.

Closed meetings.

“(3)(A) Each Council, scientific and statistical committee, and advisory panel—

“(i) shall close any meeting, or portion thereof, that concerns matters or information that bears a national security classification; and

“(ii) may close any meeting, or portion thereof, that concerns matters or information that pertains to national security, employment matters, or briefings on litigation in which the Council is interested;

and if any meeting or portion is closed, the Council, committee, or panel concerned shall publish notice of the closure in local newspapers in the major fishing ports within its region (and in other major, affected fishing ports), including the time and place of the meeting. Subparagraphs (D) and (F) shall not apply to any meeting or portion thereof that is so closed.

“(4) Each Council shall establish appropriate procedures applicable to it and to its committee and advisory panels for ensuring the confidentiality of the statistics that may be submitted to it by Federal or State authorities, and may be voluntarily submitted to it by private persons; including, but not limited to, procedures for the restriction of council employee access and the prevention of conflicts of interest; except that such procedures must, in the case of statistics submitted to the Council by a State, be consistent with the laws and regulations of that State concerning the confidentiality of such statistics.”

SEC. 6. CONTENTS OF PLANS.

Section 303 (16 U.S.C. 1853) is amended as follows:

(1) Subsection (b) is amended—

(A) by striking out “and” at the end of paragraph (6);

(B) by redesignating paragraph (7) as paragraph (8); and

(C) by inserting immediately after paragraph (6) the following new paragraph:

“(7) 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; and”.

(2) Subsection (c) is amended to read as follows:

“(c) PROPOSED REGULATIONS.—The proposed regulations which the Council deems necessary or appropriate for purposes of carrying out

a plan or amendment to a plan shall be submitted to the Secretary simultaneously with the plan or amendment for action by the Secretary under sections 304 and 305.”; and

Infra; post, p. 2490.

(3) Such section is amended by adding at the end thereof the following new subsection:

“(e) DATA COLLECTION PROGRAMS.—If a Council determines that additional information and data (other than information and data that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations) would be beneficial for the purposes of—

“(1) determining whether a fishery management plan is needed for a fishery; or

“(2) preparing a fishery management plan;

the Council may request that the Secretary implement a data collection program for the fishery which would provide the types of information and data (other than information and data that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations) specified by the Council. The Secretary shall approve such a data 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 a data collection program is not justified, he shall inform the Council of the reasons for such determination in writing. The determinations of the Secretary under this subsection regarding a Council request shall be made within a reasonable period of time after he receives that request.”.

Regulations.

SEC. 7. ACTION BY SECRETARY.

(a) Section 304 (16 U.S.C. 1854) is amended as follows:

(1) Subsections (a) and (b) are amended to read as follows:

“(a) ACTION BY THE SECRETARY AFTER RECEIPT OF PLAN.—(1) After the Secretary receives a fishery management plan, or amendment to a plan, which was prepared by a Council (the date of receipt of which is hereafter in this section referred to as the ‘receipt date’), the Secretary shall—

“(A) immediately commence a review of the management plan or amendment to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law;

Review.

“(B) immediately publish in the Federal Register a notice stating that the plan or amendment is available and that written data, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 75-day period beginning on the receipt date; and

Publication in Federal Register.

“(C) by the 30th day after the receipt date—

“(i) make such changes in the proposed regulations submitted for the plan or amendment under section 303(c) as may be necessary for the implementation of the plan, and

Ante, p. 2486.

“(ii) publish such proposed regulations, including any changes made thereto under clause (i), in the Federal Register together with an explanation of those changes which are substantive.

Publication in Federal Register.

“(2) In undertaking the review required under paragraph (1)(A), the Secretary shall—

“(A) take into account the data, 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.

Plan implementation.
Post, p. 2490.

“(b)(1) A plan or amendment shall take effect and be implemented in accordance with section 305(c) if—

“(A) the Secretary does not notify the Council in writing of his disapproval, or partial disapproval, under paragraph (2), of the plan or amendment before the close of the 95th day after the receipt date; or

“(B) at any time subsequent to the 75th day after the receipt date and before such 95th day, the Secretary notifies the Council in writing that he does not intend to disapprove, or partially disapprove, the plan or amendment.

Notification of disapproval.

“(2) If after review under subsection (a) the Secretary determines that the plan or amendment is not consistent with the criteria set forth in paragraph (1)(A) of that subsection, the Secretary shall notify the Council in writing of his disapproval or partial disapproval of the plan or amendment. Such notice shall specify—

“(A) the applicable law with which the plan or amendment is inconsistent;

“(B) the nature of such inconsistency; 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.

Revised plan.

“(3)(A) If the Secretary disapproves, or partially disapproves, a proposed plan or amendment under paragraph (2), the Council may submit a revised plan or amendment, accompanied by appropriately revised proposed regulations, to the Secretary.

“(B) After the Secretary receives a revised plan or amendment under subparagraph (A) or (C)(ii), the Secretary shall immediately—

“(i) commence a review of the plan or amendment to determine whether it complies with the criteria set forth in subsection (a)(1)(A);

Publications in Federal Register.

“(ii) publish in the Federal Register a notice stating that the revised plan or amendment is available and that written data, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 30-day period beginning on the date (hereinafter in this paragraph referred to as the ‘revised receipt date’) the plan or amendment was submitted to the Secretary under subparagraph (A) or (C)(ii); and

“(iii) review the revised proposed regulations, if any, submitted by the Council and make such changes to them as may be necessary for the implementation of the plan, and thereafter publish such revised proposed regulations (as so changed) in the Federal Register together with an explanation of each of such changes that is substantive.

“(C)(i) Before the close of the 60th day after the revised receipt date, the Secretary, after taking into account any data, views, or comments received under subparagraph (B)(ii), shall complete the review required under subparagraph (B)(i) and determine whether the plan or amendment complies with the criteria set forth in subsection (a)(1)(A). If the Secretary determines that a plan or amendment is not in compliance with such criteria, he shall immediately notify the Council of his disapproval of the plan or amendment.

Notification of disapproval.

"(ii) After notifying a Council of disapproval under clause (i), the Secretary shall promptly provide to the Council a written statement of the reasons on which the disapproval was based and advise the Council that it may submit a further revised plan or amendment, together with appropriately revised proposed regulations, for review and determination under this paragraph.

"(D) A revised plan or amendment shall take effect and be implemented in accordance with section 305(c) if the Secretary does not notify the Council, in writing, by the close of the 60th day after the revised receipt date of his disapproval of the plan or amendment."

Post. p. 2490.

(2) Subsection (c)(1) is amended—

(A) by amending paragraph (1)—

(i) by amending subparagraph (B) to read as follows:

"(B) the Secretary disapproves or partially disapproves any such plan or amendment, or disapproves a revised plan or amendment, and the Council involved fails to submit a revised or further revised plan or amendment, as the case may be.", and

(ii) by adding immediately after the last sentence thereof the following flush sentence:

"The Secretary shall also prepare such proposed regulations as he deems necessary or appropriate to carry out each plan or amendment prepared by him under this paragraph."; and

(B) by amending paragraph (2) to read as follows:

"(2)(A) Whenever, under paragraph (1), the Secretary prepares a fishery management plan or amendment, the Secretary shall immediately—

(i) submit such plan or amendment, and proposed regulations to implement such plan or amendment, to the appropriate Council for consideration and comment;

(ii) publish in the Federal Register a notice stating that the plan or amendment is available and that written data, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 75-day period beginning on the date the plan or amendment was submitted under clause (i); and

(iii) by the 30th day after the date of submission under clause (i), submit for publication in the Federal Register the proposed regulations to implement the plan or amendment.

Publication in Federal Register.

"(B) The appropriate council must submit its comments and recommendations, if any, regarding the plan or amendment to the Secretary before the close of the 75-day period referred to in subparagraph (A)(ii). After the close of such 75-day period, the Secretary, after taking into account any such comments and recommendations, as well as any views, data, or comments submitted under subparagraph (A)(ii), may implement such plan or amendment under section 305(c)."

Comments and recommendations.

(3) Subsection (d) is amended by striking out the last sentence and inserting in lieu thereof the following: "The Secretary may enter into a cooperative agreement with the States concerned under which the States administer the permit system and the agreement may provide that all or part of the fees collected under the system shall accrue to the States. The level of fees charged under this subsection shall not exceed the administrative costs incurred in issuing the permits."

(b) The amendments made by subsection (a) shall only apply with respect to fishery management plans and amendments thereto that

16 USC 1854 note.

are initially submitted to the Secretary of Commerce on or after the date of the enactment of this Act for action under section 304.

SEC. 8. IMPLEMENTATION OF PLANS.

Section 305 (16 U.S.C. 1855) is amended as follows:

(1) Subsections (a) and (b) are repealed.

(2) Subsection (c) is amended to read as follows:

Regulations.

“(c) **IMPLEMENTATION.**—The Secretary shall promulgate each regulation that is necessary to carry out a plan or amendment—

Ante, 2487.

“(1) within 110 days after the plan or amendment was received by him for action under section 304(a), if such plan or amendment takes effect under section 304(b)(1);

“(2) within 75 days after a revised plan or amendment was received by him under section 304(b), if such plan or amendment takes effect under paragraph (3)(D) of such section; or

“(3) within such time as he deems appropriate in the case of a plan or amendment prepared by him under section 304(c).”

(3) Subsection (e) is amended to read as follows:

Regulations

“(e) **EMERGENCY ACTIONS.**—(1) If the Secretary finds that an emergency exists involving any fishery, he may promulgate emergency regulations necessary to address the emergency, without regard to whether a fishery management plan exists for such fishery.

“(2) If a Council finds that an emergency exists involving any fishery within its jurisdiction, whether or not a fishery management plan exists for such fishery—

“(A) the Secretary shall promulgate emergency regulations under paragraph (1) to address the emergency if the Council, by unanimous vote of the members who are voting members, requests the taking of such action; and

“(B) the Secretary may promulgate emergency regulations under paragraph (1) to address the emergency if the Council, by less than a unanimous vote, requests the taking of such action.

“(3) Any emergency regulation which changes any existing fishery management plan or amendment shall be treated as an amendment to such plan for the period in which such regulation is in effect. Any emergency regulation promulgated under this subsection—

Publication in
Federal
Register.

“(A) shall be published in the Federal Register together with the reasons therefor;

“(B) shall remain in effect for not more than 90 days after the date of such publication, except that any such regulation may, by agreement of the Secretary and the Council, be promulgated for one additional period of not more than 90 days; and

Notice of
termination,
publication in
Federal
Register.

“(C) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination, except for emergency regulations promulgated under paragraph (2) in which case such early termination may be made only upon the agreement of the Secretary and the Council concerned.”

(4) Subsection (f) is repealed.

(5) Such section is further amended by adding at the end thereof the following new subsection:

44 USC 101 note.

“(h) **EFFECT OF CERTAIN LAWS ON CERTAIN TIME REQUIREMENTS.**—The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and Executive Order Numbered 12291, dated February 17, 1981, shall be complied with within the time limitations specified in subsection (c) or section 304 (a) and (b) as they apply to the functions of the Secretary under such provisions.”

8 CFR, 1981
Comp., p. 127.
Ante, p. 2487.

SEC. 9. STATE JURISDICTION.

Section 306(a) (16 U.S.C. 1856(a)) is amended by inserting immediately after the first sentence thereof the following new sentence: "For purposes of this Act, except as provided in subsection (b), the jurisdiction and authority of a State shall extend (1) to any pocket of waters that is adjacent to the State and totally enclosed by lines delimiting the territorial sea of the United States pursuant to the Geneva Convention on the Territorial Sea and Contiguous Zone or any successor convention to which the United States is a party and (2) with respect to the body of water commonly known as Nantucket Sound, to the pocket of water west of the seventieth meridian west of Greenwich."

SEC. 10. SUBPENA POWER.

Section 308 (16 U.S.C. 1858) is amended by adding at the end thereof the following new subsection:

"(e) **SUBPENAS.**—For the purposes of conducting any hearing under this section, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof."

SEC. 11. OFFENSES.

(a) Section 309(b) (16 U.S.C. 1859(b)) is amended by striking out "or imprisonment for not more than 1 year, or both".

(b) The amendment made by subsection (a) applies with respect to offenses committed under section 309 on or after the date of the enactment of this Act.

16 USC 1859
note.

SEC. 12. CIVIL FORFEITURES.

Section 310(a) (16 U.S.C. 1860(a)) is amended by inserting "(or the fair market value thereof)" immediately after "fish" each place it appears.

SEC. 13. POWERS OF AUTHORIZED OFFICERS.

Section 311(b) (16 U.S.C. 1861(b)) is amended—

- (1) by inserting "(1)" immediately before "Any officer";
- (2) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;
- (3) by redesignating subparagraphs (A), (B), (C), (D), and (E) as clauses (i), (ii), (iii), (iv), and (v), respectively; and
- (4) by adding at the end thereof the following new paragraph:

"(2) Subject to the direction of the Secretary, a person charged with law enforcement responsibilities by the Secretary who is performing a duty related to enforcement of a law regarding fisheries or other marine resources may make an arrest without a warrant for an offense against the United States committed in his presence,

or for a felony cognizable under the laws of the United States, if he has reasonable grounds to believe that the person to be arrested has committed or is committing a felony. The arrest authority described in the preceding sentence may be conferred upon an officer or employee of a State agency, subject to such conditions and restrictions as are set forth by agreement between the State agency, the Secretary, and, with respect to enforcement operations within the fishery conservation zone, the Secretary of the department in which the Coast Guard is operating.”

SEC. 14. AUTHORIZATION OF APPROPRIATIONS.

(a) Section 406 (16 U.S.C. 1882) is amended by adding at the end thereof the following new paragraphs:

“(9) \$59,000,000 for the fiscal year ending September 30, 1983.

“(10) \$64,000,000 for the fiscal year ending September 30, 1984.

“(11) \$69,000,000 for the fiscal year ending September 30, 1985.”

(b)(1) Subsection (c) of the first section of the Anadromous Fish Conservation Act (16 U.S.C. 757a(c)) is amended—

(A) by inserting “(1)” immediately before “Whenever”; and

(B) by adding at the end thereof the following new paragraph:

“(2) In the case of any State that has implemented an interstate fisheries management plan for anadromous fishery resources, the Federal share of any grant made under this section to carry out activities required by such plan shall be 90 percent.”

(2) Section 4(a) of the Anadromous Fish Conservation Act (16 U.S.C. 757d(a)) is amended by adding after paragraph (3) the following new paragraph:

“(4) \$7,500,000 for each of fiscal years 1983, 1984, and 1985.”

(3) The first sentence of section 7(d) of the Anadromous Fish Conservation Act (16 U.S.C. 757g(d)) is amended by striking out “and” after “1981,” and by inserting immediately before the period the following: “, and not to exceed \$1,000,000 for each of the fiscal years ending September 30, 1983, and September 30, 1984”.

SEC. 15. TECHNICAL AMENDMENTS.

(a) Section 3(27) (16 U.S.C. 1802(27)) is amended to read as follows:

“(27) The term ‘vessel of the United States’ means—

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

“(B) any vessel numbered in accordance with the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 et seq.) and measuring less than 5 net tons; or

“(C) any vessel numbered under the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 et seq.) and used exclusively for pleasure.”

(b) Section 307(2) (16 U.S.C. 1857(2)) is amended—

(A) by amending subparagraph (A) to read as follows:

“(A) in fishing within the boundaries of any State, except recreational fishing permitted under section 201(j);” and

46 USC 1451
note.

Ante, p. 2481.

(B) by striking out "in fishing" in subparagraph (B) and inserting in lieu thereof "in fishing, except recreational fishing permitted under section 201(j)."

Ante, p. 107.

(c) The last sentence of section 311(a) (16 U.S.C. 1861(a)) is repealed.

(d) Section 8 of the Central, Western, and South Pacific Fisheries Development Act (16 U.S.C. 758e-5) is amended by striking out "and 1982" and inserting in lieu thereof "1982, 1983, 1984, and 1985".

Approved January 12, 1983.

LEGISLATIVE HISTORY—H.R. 5002 (S. 2450):

HOUSE REPORTS: No. 97-549 (Comm. on Merchant Marine and Fisheries) and Nos. 97-981 and 97-982 (Comm. of Conference).

SENATE REPORT No. 97-519 accompanying S. 2450 (Comm. on Commerce, Science and Transportation).

CONGRESSIONAL RECORD, Vol. 128 (1982):

Dec. 16, considered and passed House.

Dec. 17, considered and passed Senate, amended.

Dec. 20, House considered and rejected conference report 97-981 and agreed to conference report 97-982.

Dec. 21, Senate agreed to conference report 97-982.

b. Coastal Fisheries

American Fisheries Promotion Act of 1980*

* Pub. L. 96-561, 94 Stat. 3287; 16 U.S.C. §1823 (1980).

TITLE II—PROMOTION OF AMERICAN FISHERIES

SEC. 201. SHORT TITLE.

This title may be cited as the "American Fisheries Promotion Act".

American
Fisheries
Promotion Act.
16 USC 1801
note.

PART A—RESEARCH AND DEVELOPMENT REGARDING UNITED STATES FISHERIES

SEC. 210. RESEARCH AND DEVELOPMENT PROJECTS AND PROGRAMS.

AMENDMENTS TO SALTONSTALL-KENNEDY ACT.—Section 2 of the Act of August 11, 1939 (commonly referred to as the Saltonstall-Kennedy Act, 15 U.S.C. 713c-3), is amended—

- (1) by striking out subsections (b), (c), (d), and (e);
- (2) by redesignating subsection (a) as subsection (b);
- (3) by inserting immediately before subsection (b) (as so redesignated) the following new subsection:

"Sec. 2. (a) DEFINITIONS.—As used in this section—

"(1) The term 'person' means—

"(A) any individual who is a citizen or national of the United States or a citizen of the Northern Mariana Islands;

"(B) any fishery development foundation or other private nonprofit corporation located in Alaska; and

"(C) any corporation, partnership, association, or other entity (including, but not limited to, any fishery development foundation or other private nonprofit corporation not located in Alaska), nonprofit or otherwise, if such entity is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916 (46 U.S.C. 802) and for purposes of applying such section 2 with respect to this section—

"(i) the term 'State' as used therein includes any State referred to in paragraph (3),

"(ii) citizens of the United States must own not less than 75 percent of the interest in the entity or, in the case of a nonprofit entity, exercise control in the entity that is determined by the Secretary to be the equivalent of such ownership, and

"(iii) nationals of the United States and citizens of the Northern Mariana Islands shall be treated as citizens of the United States in meeting the ownership and control requirements referred to in clause (ii).

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

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

"(4) The term 'United States fishery' means any fishery, including any tuna fishery, that is, or may be, engaged in by citizens or nationals of the United States or citizens of the Northern Mariana Islands.

"(5) The term 'citizen of the Northern Mariana Islands' means—

"(A) an individual who qualifies as such under section 8 of the Schedule on Transitional Matters attached to the Constitution of the Northern Mariana Islands; or

"(B) a corporation, partnership, association, or other entity organized or existing under the laws of the Northern Mariana Islands, not less than 75 percent of the interest in which is owned by individuals referred to in subparagraph (A) or citizens or nationals of the United States, in cases in which 'owned' is used in the same sense as in section 2 of the Shipping Act, 1916 (46 U.S.C. 802).";

(4) by amending subsection (b) (as so redesignated)—

(i) by inserting "FUND.—" immediately after "(b)" and before the first word of such subsection,

(ii) by striking out "Secretary of the Interior" the first place it appears therein and inserting in lieu thereof "Secretary",

(iii) by striking out "and used by the Secretary of the Interior" and inserting in lieu thereof "only for use by the Secretary", and

(iv) by striking out clauses (1), (2), and (3) and inserting in lieu thereof the following: "(1) to provide financial assistance for the purpose of carrying out fisheries research and development projects approved under subsection (c), and (2) to implement the national fisheries research and development program provided for under subsection (d)."; and

(5) by adding immediately after subsection (b) (as so redesignated) the following:

"(c) FISHERIES RESEARCH AND DEVELOPMENT PROJECTS.—(1) The Secretary shall make grants from the fund established under subsection (b) to assist persons in carrying out research and development projects addressed to any aspect of United States fisheries, including, but not limited to, harvesting, processing, marketing, and associated infrastructures.

"(2) The Secretary shall—

"(A) at least once each fiscal year, receive, during a 60-day period specified by him, applications for grants under this subsection;

“(B) prescribe the form and manner in which applications for grants under this subsection must be made, including, but not limited to, the specification of the information which must accompany applications to ensure that the proposed projects comply with Federal law and can be evaluated in accordance with paragraph (3)(B); and

“(C) approve or disapprove each such application before the close of the 120th day after the last day of the 60-day period (specified under subparagraph (A)) in which the application was received.

“(3) No application for a grant under this subsection may be approved unless the Secretary—

Approval provisions.

“(A) is satisfied that the applicant has the requisite technical and financial capability to carry out the project; and

“(B) evaluates the proposed project as to—

“(i) soundness of design,

“(ii) the possibilities of securing productive results,

“(iii) minimization of duplication with other fisheries research and development projects,

“(iv) the organization and management of the project,

“(v) methods proposed for monitoring and evaluating the success or failure of the project, and

“(vi) such other criteria as the Secretary may require.

“(4) Each grant made under this subsection shall be subject to such terms and conditions as the Secretary may require to protect the interests of the United States, including, but not limited to, the following:

Terms and conditions.

“(A) The recipient of the grant must keep such records as the Secretary shall require as being necessary or appropriate for disclosing the use made of grant funds and shall allow the Secretary and the Comptroller General of the United States, or any of their authorized representatives, access to such records for purposes of audit and examination.

Recordkeeping requirements.

“(B) The amount of a grant may not be less than 50 percent of the estimated cost of the project.

“(C) The recipient of the grant must submit to the Secretary periodic project status reports.

Reports.

“(5)(A) If the cost of a project will be shared by the grant recipient, the Secretary shall accept, as a part or all of that share, the value of in-kind contributions made by the recipient, or made available to, and applied by, the recipient, with respect to the project.

“(B) For purposes of subparagraph (A), in-kind contributions may be in the form of, but are not limited to, personal services rendered in carrying out functions related to, and permission to use real or personal property owned by others (for which consideration is not required) in carrying out the project. The Secretary shall establish (i) the training, experience, and other qualifications which shall be required in order for services to be considered as in-kind contributions; and (ii) the standards under which the Secretary will determine the value of in-kind contributions for purposes of subparagraph (A).

“(C) Any valuation determination made by the Secretary for purposes of this paragraph shall be conclusive.

“(d) NATIONAL FISHERIES RESEARCH AND DEVELOPMENT PROGRAM.—
(1) The Secretary shall carry out a national program of research and development addressed to such aspects of United States fisheries (including, but not limited to, harvesting, processing, marketing, and associated infrastructures), if not adequately covered by projects assisted under subsection (c), as the Secretary deems appropriate.

Report to
congressional
committees.

"(2) The Secretary shall, after consultation with appropriate representatives of the fishing industry, submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives, an annual report, that must be submitted not later than 60 days before the close of each fiscal year, containing—

"(A) the fisheries development goals and funding priorities under paragraph (1) for the next fiscal year;

"(B) a description of all pending projects assisted under subsection (c) or carried out under paragraph (1), in addition to—

"(i) a list of those applications approved and those disapproved under subsection (c), and the total amount of grants made, for the current fiscal year, and

"(ii) a statement of the extent to which available funds were not obligated or expended by the Secretary for grants under subsection (c) during the current fiscal year; and

"(C) an assessment of each project assisted under subsection (c) or carried out under paragraph (1) that was completed in the preceding fiscal year regarding the extent to which (i) the objectives of the project were attained, and (ii) the project contributed to fishery development.

"(e) ALLOCATION OF FUND MONEYS.—(1) With respect to any fiscal year, not less than 50 percent of—

"(A) the moneys transferred to the fund under subsection (b) or any other provision of law with respect to that fiscal year; and

"(B) such existing fund moneys carried over into that fiscal year;

shall be used by the Secretary during that fiscal year to provide financial assistance for projects under subsection (c); and the remainder of such moneys in the fund shall be used to implement the national fisheries research and development program established under subsection (d) during that fiscal year.

"(2) Moneys accruing to the fund established under subsection (b) for any fiscal year and not expended with respect to that year shall remain available for expenditure under this section without fiscal year limitation."

15 USC 1511b.

SEC. 211. UNITED STATES FISHERY TRADE OFFICERS.

(a) **APPOINTMENT.**—For purposes of carrying out export promotion and other fishery development responsibilities, the Secretary of Commerce (hereinafter in this section referred to as the "Secretary") shall appoint not fewer than six officers who shall serve abroad to promote United States fishing interests. These officers shall be knowledgeable about the United States fishing industry, preferably with experience derived from the harvesting, processing, or marketing sectors of the industry or from the administration of fisheries programs. Such officers, who shall be employees of the Department of Commerce, shall have the designation of fishery trade officers.

(b) **ASSIGNMENT.**—Upon the request of the Secretary, the Secretary of State shall officially assign fishery trade officers to such diplomatic missions of the United States as the Secretary designates (three of which shall be those in Brussels, Belgium; Rome, Italy; and Tokyo, Japan) and shall obtain for them diplomatic privileges and immunities equivalent to those enjoyed by foreign service personnel of comparable rank and salary.

(c) **FUNCTIONS OF FISHERY TRADE OFFICERS.**—The functions of fishery trade officers appointed under subsection (a) shall be—

(1) to increase the effectiveness of United States fishery export promotion efforts through such activities as the coordination of market development efforts and the provision of services and facilities for exporters of United States fishery products;

(2) to develop, maintain, and make available to interested persons listings of (A) trade, government, and other organizations that are concerned with, or have an interest in, international trade in United States fishery products, and (B) United States fishery products available for such trade;

(3) to prepare quarterly reports regarding (A) the supply, demand, and prices of each United States fishery product exported, or for which there may be export potential, to the foreign nation or area concerned, and (B) the trade barriers or incentives of such nation or area that affect imports of such products;

(4) to prepare weekly statements regarding the prices for each fishery product for which there may be United States export potential to the foreign nation or area concerned; and

(5) to carry out such other functions as the Secretary may require.

(d) **ADMINISTRATION.**—The Secretary of State and the Secretary shall enter into cooperative arrangements concerning the provision of office space, equipment, facilities, clerical services, and such other administrative support as may be required for fishery trade officers and their families.

PART B—FINANCIAL ASSISTANCE WITH RESPECT TO FISHING VESSELS AND FISHERY FACILITIES

SEC. 220. GUARANTEE OF OBLIGATIONS FOR FISHING VESSELS AND FOR FISHERY FACILITIES.

Title XI of the Merchant Marine Act, 1936 (46 U.S.C. 1271–1280) is amended as follows:

(1) Section 1101 is amended:

(A) in subsection (h) by striking “equipping; and” and substituting “equipping;”;

(B) in subsection (i) by striking “mark.” and substituting “mark;”;

(C) by adding at the end thereof the following new subsections:

“(j) The term ‘citizen of the Northern Mariana Islands’ means—

“(1) an individual who qualifies as such under section 8 of the Schedule on Transitional Matters attached to the Constitution of the Northern Mariana Islands; or

“(2) a corporation, partnership, association, or other entity formed under the laws of the Northern Mariana Islands, not less than 75 percent of the interest in which is owned by individuals referred to in paragraph (1) or citizens or nationals of the United States, in cases in which ‘owned’ is used in the same sense as in section 2 of the Shipping Act, 1916 (46 U.S.C. 802);

“(k) The term ‘fishery facility’ means—

“(1) for operations on land—

“(A) any structure or appurtenance thereto designed for the unloading and receiving from vessels, the processing, the holding pending processing, the distribution after processing, or the holding pending distribution, of fish from one or more fisheries,

46 USC 1271.

Definitions.
46 USC 1271.

“(B) the land necessary for any such structure or appurtenance described in subparagraph (A), and

“(C) equipment which is for use in connection with any such structure or appurtenance and which is necessary for the performance of any function referred to in subparagraph (A); or

“(2) for operations other than on land, any vessel built in the United States used for, equipped to be used for, or of a type which is normally used for, the processing of fish;

but only if such structure, appurtenance, land, equipment, or vessel is owned by an individual who is a citizen or national of the United States or a citizen of the Northern Mariana Islands or by a corporation, partnership, association, or other entity that is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916 (46 U.S.C. 802), and for purposes of applying such section 2 with respect to this section—

“(i) the term ‘State’ as used therein includes any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the Northern Mariana Islands, or any other Commonwealth, territory, or possession of the United States; and

“(ii) citizens of the United States must own not less than 75 percent of the interest in the entity and nationals of the United States or citizens of the Northern Mariana Islands shall be treated as citizens of the United States in meeting such ownership requirement;

“(l) The term ‘fishing vessel’ has the meaning given such term by section 3(11) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1802(11)); and any reference in this title to a vessel designed principally for commercial use in the fishing trade or industry shall be treated as a reference to a fishing vessel;

“(m) The term ‘United States’ when used in a geographical context with respect to fishing vessels or fishery facilities includes all States referred to in subsection (k)(i).”

46 USC 1273.

(2) Section 1103(f) is amended by inserting immediately before the period the following: “, except that—

“(1) not less than 3 percent, nor more than 7 percent, of such sum shall be reserved for the guarantee of obligations for fishing vessels and fishery facilities that meet the economic soundness criteria set forth in section 1104(d)(1), and

“(2) not less than 3 percent, nor more than 7 percent, of such sum shall be reserved for the guarantee of obligations for fishing vessels and fishery facilities that meet the economic soundness criteria set forth in section 1104(d)(2),

but the aggregate amount reserved for the purposes set forth in paragraphs (1) and (2) must equal 10 percent of such sum.”

46 USC 1274.

(3) Section 1104 is amended—

(A) in subsection (a)—

(i) by striking out “(D) in the fishing trade or industry; or (E)” in paragraph (1) and inserting in lieu thereof “; or (D)”;

(ii) by redesignating subparagraph (F) in paragraph (1) as subparagraph (E);

(iii) by redesignating paragraphs (2) through (4) as paragraphs (3) through (5), respectively, and by inserting immediately after paragraph (1) the following new paragraph:

“(2) financing, including reimbursement of an obligor for expenditures previously made for, construction, reconstruction, reconditioning, or purchase of a vessel or vessels owned by citizens or nationals of the United States or citizens of the Northern Mariana Islands which are designed principally for research, or for commercial use in the fishing trade or industry;”;

(iv) by striking out “or” at the end of paragraph (4) (as redesignated by clause (iii));

(v) by striking out “or (3)” in paragraph (5) (as so redesignated) and inserting in lieu thereof “(3), or (4)”, and by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and

(vi) by adding immediately after paragraph (5) the following:

“(6) financing or refinancing, including, but not limited to, the reimbursement of obligors for expenditures previously made for, the construction, reconstruction, reconditioning, or purchase of fishery facilities; or

“(7) financing the purchase of fishing vessels or fishery facilities, the construction, reconstruction, reconditioning, or purchase of which was guaranteed under this title, that are sold at foreclosure instituted by the Secretary, or are sold by the Secretary following purchase at foreclosure, and the reconstruction or reconditioning thereof.

Any obligation guaranteed under paragraph (6) shall be treated, for purposes of this title, in the same manner and to the same extent as an obligation guaranteed under this title which aids in the construction, reconstruction, reconditioning, or purchase of a vessel; except with respect to provisions of this title that by their nature can only be applied to vessels.”;

(B) by adding at the end of subsection (b) the following:

“The Secretary may not establish, as a condition of eligibility for guarantee under this title, a minimum principal amount for an obligation covering the reconstruction or reconditioning of a fishing vessel or fishery facility. For purposes of this title, the reconstruction or reconditioning of a fishing vessel or fishery facility does not include the routine minor repair or maintenance of the vessel or facility.”;

(C) in subsection (d)—

(i) by striking out “No” and inserting in lieu thereof

“(1) Except as provided in paragraph (2), no”;

(ii) by adding at the end thereof the following:

“(2) In applying paragraph (1) with respect to commitments to guarantee, and the guarantee of, obligations for fishing vessels and fishery facilities used for underutilized fisheries, the Secretary of Commerce may apply an economic soundness test that is less stringent than that which has been traditionally applied to obligation guarantees under this paragraph.

“(3) No commitment to guarantee, or guarantee of an obligation may be made by the Secretary of Commerce under this title for the purchase of a used fishing vessel or used fishery facility unless—

“(A) the vessel or facility will be reconstructed or reconditioned in the United States and will contribute to the development of the United States fishing industry; or

“(B) the vessel or facility will be used in the harvesting of fish from, or for a purpose described in section 1101(k) with respect to, an underutilized fishery.”; and

(D) in subsection (g)—

(i) by inserting “(1)” immediately after “(g)”; and

(ii) by adding at the end thereof the following new paragraph:

“(2) The Secretary of Commerce shall establish within the Fund the following subfunds:

“(A) The standard fishery subfund which shall contain all moneys received for, and incident to, the guarantee of obligations with respect to fishing vessels and fishery facilities to which the economic soundness criteria set forth in section 1104(d)(1) apply.

Ante, p. 3292.

“(B) The underutilized fishery subfund which shall contain all moneys received for, and incident to, the guarantee of obligations with respect to fishing vessels and fishery facilities to which the economic soundness criteria set forth in section 1104(d)(2) apply.

Ante, p. 3292.

“(C) The general subfund which shall contain all moneys received for, and incident to, the guarantee of obligations for vessels other than fishing vessels.”

46 USC 1275.

(4) The first sentence of section 1105(d) is amended by inserting immediately before the period at the end thereof the following: “, and shall be paid from the appropriate subfund required to be established under section 1104(g)(2)”.

Supra.

16 USC 742c note.

SEC. 221. LOANS UNDER THE FISH AND WILDLIFE ACT OF 1956.

(a) **LOAN AUTHORITY UNTIL OCTOBER 1, 1982.**—During the period beginning on the date of the enactment of this title and ending at the close of September 30, 1982, the Secretary of Commerce (hereinafter in this section referred to as the “Secretary”) may make loans from the fisheries loan fund established under subsection (c) of section 4 of the Fish and Wildlife Act of 1956 (16 U.S.C. 742c) only for the purposes set forth in subsections (b) and (c) of this section. Except to the extent that they are inconsistent with, or contrary to, this section, the provisions of such section 4 shall apply with respect to loans made for such purposes.

(b) **LOANS TO AVOID DEFAULT ON OBLIGATIONS COVERING FISHING VESSELS.**—(1) The Secretary may make loans for the purpose of assisting obligors to avoid default on obligations that are issued with respect to the construction, reconstruction, reconditioning or purchase of fishing vessels and that—

(A) are guaranteed by the United States under title XI of the Merchant Marine Act, 1936 (46 U.S.C. 1271-1280, relating to Federal ship mortgage insurance); or

(B) are not guaranteed under such title XI, but the fishing vessels concerned meet the use and documentation requirements, and the obligors meet the citizenship requirements, that would apply if the obligations were guaranteed under that title.

Ante, p. 3291.

(2)(A) Within the 30-day period beginning on the date of the enactment of this title in the case of fiscal year 1981, and before the beginning of fiscal year 1982, the Secretary shall estimate the number, and the aggregate amount, of loans described in paragraph (1)(A) for which application will likely be made during each of such fiscal years and shall reserve that amount in the fisheries loan fund for the purpose of making such loans during such year (or if such amount is larger than the fund balance, the Secretary shall reserve the whole fund for such purpose).

(B) If any moneys are available in the fisheries loan fund for each such fiscal year after subparagraph (A) is complied with for that year, the Secretary shall use such moneys for the purpose of making loans described in paragraph (1)(B) during that year.

(C) At an appropriate time during each of fiscal years 1981 and 1982, the Secretary shall compare the actual loan experience during that year with the estimate made for that year under subparagraph (A) and if the Secretary determines, on the basis of such comparison, that the demand for loans described in paragraph (1)(A) will be less than estimated, the Secretary shall, for the fiscal year concerned, apply moneys reserved for such loans for the purpose of making loans described in paragraph (1)(B) and, to the extent not utilized for loans described in paragraph (1)(B), for the purpose of making loans under subsection (c).

(3) The Secretary may make loans under this subsection only to owners or operators who, in the judgment of the Secretary, have substantial experience and proven ability in the management and financing of fishing operations, and only if (A) loans for the purpose described in paragraph (1) are not otherwise available at reasonable rates which permit continued operation, and (B) the loans are likely to result in the financial viability of the fishing operations of the owners or operators. Each such loan shall be subject to such terms and conditions as the Secretary deems necessary or appropriate to protect the interests of the United States and to carry out the purpose of this subsection. In establishing such terms and conditions, the Secretary shall take into account, among such other factors he deems pertinent, the extent to which the obligations concerned have been retired, and the overall financial condition of the obligors. The interest rate on loans made under the authority of this subsection shall not exceed that rate determined by the Secretary to be sufficient to cover the costs incurred in processing and servicing of such loans.

Eligibility requirements.

Terms and conditions.

(C) **LOANS TO COVER OPERATING LOSSES.**—(1) If the Secretary determines that moneys will be available in such fisheries loan fund for fiscal year 1981 or 1982, or both, after loans under subsection (b) are provided for for that year, the Secretary may make loans for the purpose of assisting owners and operators of fishing vessels to cover vessel operating expenses in cases where an owner or operator incurs, or may incur, a net operating loss within such fiscal year.

(2) Each loan made by the Secretary under this subsection shall be subject to such terms and conditions as the Secretary deems necessary or appropriate to protect the interests of the United States and to carry out the purposes of this subsection. The Secretary may make loans under this subsection only to owners or operators who, in the judgment of the Secretary, have substantial experience and proven ability in the management and financing of fishing operations, and only if (A) loans for the purpose described in paragraph (1) are not otherwise available at reasonable rates which permit continued operation, and (B) the loans are likely to result in the financial viability of the fishing operations of the owners or operators. The interest rate on loans made under this subsection shall be the rate prevailing for loans made under the Emergency Agricultural Credit Act of 1978 (7 U.S.C. preceding 1961 note).

Terms and conditions.

**PART C—AMENDMENTS TO THE FISHERY CONSERVATION AND
MANAGEMENT ACT OF 1976**

**SUBPART 1—FOREIGN FISHING IN FISHERIES SUBJECT TO THE EXCLUSIVE
FISHERY MANAGEMENT AUTHORITY OF THE UNITED STATES**

SEC. 230. FOREIGN FISHING.

Section 201(d) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1821(d)) is amended to read as follows:

Definitions.

“(d) **TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING.**—(1) As used in this subsection—

“(A) The term ‘base harvest’ means, with respect to any United States fishery, the total allowable level of foreign fishing during the 1979 harvesting season.

“(B) The term ‘harvesting season’ means the period established under this Act by the Secretary during which foreign fishing is permitted within a United States fishery. For purposes of this subsection, a harvesting season is designated by the calendar year in which the last day of the harvesting season occurs, regardless whether fishing is not permitted on that day due to emergency or other closure of the fishery.

“(C) The term ‘calculation factor’ means, with respect to each United States fishery, 15 percent of the base harvest.

“(D) The term ‘reduction factor amount’ means, with respect to each United States fishery, for any harvesting season after the 1980 harvesting season—

“(i) an amount equal to 15 percent of the base harvest for that fishery, if, in addition to the level of harvest by vessels of the United States in the designated preceding harvesting season for the fishery, such vessels harvest, in one or more harvesting seasons, not less than 75 percent of the calculation factor;

“(ii) an amount equal to 10 percent of the base harvest for the fishery, if, in addition to the level of harvest by vessels of the United States in the designated preceding harvesting season for the fishery, such vessels harvest, in one or more harvesting seasons, not less than 50 percent, but less than 75 percent, of the calculation factor; or

“(iii) an amount equal to 5 percent of the base harvest for the fishery, if, in addition to the level of harvest by vessels of the United States in the designated previous harvesting season for the fishery, such vessels harvest, in one or more harvesting seasons, not less than 25 percent, but less than 50 percent, of the calculation factor.

For purposes of this paragraph, the term ‘designated preceding harvest season’ means—

“(I) until a reduction factor amount is first achieved under this paragraph with respect to the fishery concerned, the 1979 harvesting season, and

“(II) after such amount is first achieved, the most recent harvesting season in which a reduction factor amount was achieved.

“(E) The term ‘annual fishing level’ for any United States fishery during any harvesting season after the 1980 harvesting season is the base harvest for the fishery reduced by—

“(i) an amount equal to the reduction factor amount for that harvesting season; and

“(ii) an amount equal to the increased level of harvest by vessels of the United States over the level achieved by such vessels in the 1979 harvesting season for the fishery.

“(F) The term ‘United States fishery’ means any fishery subject to the exclusive fishery management authority of the United States.

“(2) The total allowable level of foreign fishing, if any, with respect to any United States fishery for each harvesting season after the 1980 harvesting season shall be—

Foreign fishing,
total allowable
level.

“(A) the level representing that portion of the optimum yield of such fishery that will not be harvested by vessels of the United States as determined in accordance with the provisions of this Act (other than those relating to the determination of annual fishing levels), or

“(B) the annual fishing level determined pursuant to paragraph (3) for the harvesting season.

“(3) For each United States fishery, the appropriate fishery management council, on a timely basis, may determine and certify to the Secretary of State and the Secretary the annual fishing level for that fishery for each harvesting season after the 1980 harvesting season.

Annual fishing
level.

“(4) If with respect to any harvesting season for any United States fishery for which the total allowable level of foreign fishing is determined under paragraph (2)(B), the Secretary, in consultation with the Secretary of State, approves the determination by any appropriate fishery management council that any portion of the optimum yield for that harvesting season will not be harvested by vessels of the United States, the Secretary of State, in accordance with subsection (e), shall allocate such portion for use during that harvesting season by foreign fishing vessels; except that if—

Allowable levels,
allocation.

“(A) the making available of such portion (or any part thereof) during that harvesting season is determined to be detrimental to the development of the United States fishing industry; and

“(B) such portion or part will be available for harvest in the immediately succeeding harvesting season, as determined on the basis of the best available scientific information;

then such portion or part shall be allocated for use by foreign fishing vessels in such succeeding harvesting season. The determinations required to be made under subparagraphs (A) and (B) of the preceding sentence shall be made by the Secretary in consultation with the Secretary of State and on the basis of any recommendation of any appropriate fishery management council.”

SEC. 231. ALLOCATION OF ALLOWABLE LEVELS OF FOREIGN FISHING.

(a) AMENDMENTS.—The last sentence of section 201(e)(1) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1821(e)(1)) is amended to read as follows: “All such determinations shall be made by the Secretary of State and the Secretary on the basis of—

“(A) whether, and to what extent, such nations impose tariff barriers or nontariff barriers on the importation, or otherwise restrict the market access, of United States fish or fishery products;

“(B) whether, and to what extent, such nations are cooperating with the United States in the advancement of existing and new opportunities for fisheries trade, particularly through the purchase of fish or fishery products from United States processors or from United States fishermen;

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

“(D) whether, and to what extent, such nations require the fish harvested from the fishery conservation zone for their domestic consumption;

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

“(F) whether, and to what extent, the fishing vessels of such nations have traditionally engaged in fishing in such fishery;

“(G) whether, and to what extent, such nations are cooperating with the United States in, and making substantial contributions to fishery research and the identification of fishery resources; and

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

16 USC 1821
note.

Ante, p. 3296.

(b) **TAKING EFFECT OF AMENDMENTS.**—The amendments made by subsection (a) shall apply with respect to the 1981 harvesting season and harvesting seasons thereafter (as defined in section 201(d)(1) of the Fishery Conservation and Management Act of 1976, as amended by section 301).

SEC. 232. PERMIT FEES.

(a) **INTERIM FEES.**—(1) Effective with respect to permits issued under section 204(b) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1824(b)(10)) for 1981, paragraph (10) of such section is amended by striking out the last sentence thereof and inserting in lieu thereof the following: “Such fees shall be formulated so as to ensure that the receipts resulting from the payment of the fees under this paragraph for permits issued for 1981 are not less than an amount equal to 7 percent of the ex vessel value of the total harvest by foreign fishing vessels in the fishery conservation zone during 1979. The fees collected by the Secretary under this paragraph for permits issued for 1981 shall be transferred to the fisheries loan fund established under section 4 of the Fish and Wildlife Act of 1956 (16 U.S.C. 742c) and used for the purpose of making loans therefrom, but only to the extent and in amounts provided for in advance in appropriation Acts.”

(b) **PERMANENT FEES.**—Effective with respect to permits issued under section 204(b) of such Act of 1976 after 1981, paragraph (10) of such section is amended to read as follows—

“(10) **FEES.**—Fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit is issued pursuant to this subsection. The Secretary, in consultation with the Secretary of State, shall establish a schedule of such fees which shall apply nondiscriminatorily to each foreign nation. The fees imposed under this paragraph shall be at least in an amount sufficient to return to the United States an amount which bears to the total cost of carrying out the provisions of this Act (including, but not limited to, fishery conservation and management, fisheries research, administration, and enforcement, but excluding costs for observers covered by surcharges under section 201(i)(4)) during each fiscal year the same ratio as the aggregate quantity of fish harvested by foreign fishing

Schedule.

Post, p. 3299.

vessels within the fishery conservation zone during the preceding year bears to the aggregate quantity of fish harvested by both foreign and domestic fishing vessels within such zone and the territorial waters of the United States during such preceding year. The amount collected by the Secretary under this paragraph shall be transferred to the fisheries loan fund established under section 4 of the Fish and Wildlife Act of 1956 (16 U.S.C. 742c) for so long as such fund exists and used for the purpose of making loans therefrom, but only to the extent and in amounts provided for in advance in appropriation Acts.”

SEC. 233. FISHERY DEVELOPMENT OBJECTIVES.

Section 2(b)(6) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801(b)(6)) is amended by inserting immediately before the period at the end thereof the following: “, and to that end, to ensure that optimum yield determinations promote such development”.

SEC. 234. FISHERY MANAGEMENT COUNCIL TRAVEL FUNDS.

The second sentence of section 302(d) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852(d)) is amended by striking out the period and inserting in lieu thereof the following: “, and other nonvoting members may be reimbursed for actual expenses”.

SEC. 235. NOTICE OF AVAILABILITY OF MANAGEMENT PLANS.

Section 305(a) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1855(a)) is amended by inserting “a notice of availability of” immediately after “Federal Register (A)”.

SUBPART 2—FULL OBSERVER COVERAGE PROGRAM

SEC. 236. ESTABLISHMENT OF FULL OBSERVER COVERAGE PROGRAM.

Section 201 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1821) is amended by adding at the end thereof the following new subsection:

“(i) **FULL OBSERVER COVERAGE PROGRAM.**—(1) Except as provided in paragraph (2), the Secretary shall establish a program under which a United States observer will be stationed aboard each foreign fishing vessel while that vessel is engaged in fishing within the fishery conservation zone.

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

Waiver.

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

“(B) with respect to any foreign fishing vessel while it is engaged in fishing within the fishery conservation zone—

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

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

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

“(3) United States observers, while aboard foreign fishing vessels, shall carry out such scientific and other functions as the Secretary deems necessary or appropriate to carry out the purposes of this Act.

Ante, p. 3298.

“(4) In addition to any fee imposed under section 204(b)(10) of this Act and section 10(e) of the Fishermen’s Protective Act of 1967 (22 U.S.C. 1880(e)) with respect to foreign fishing for any year after 1980, the Secretary shall impose, with respect to each foreign fishing vessel for which a permit is issued under such section 204, a surcharge in an amount sufficient to cover all the costs of providing a United States observer aboard that vessel. The failure to pay any surcharge imposed under this paragraph shall be treated by the Secretary as a failure to pay the permit fee for such vessel under section 204(b)(10). All surcharges collected by the Secretary under this paragraph shall be deposited in the Foreign Fishing Observer Fund established by paragraph (5).

Foreign Fishing
Observer Fund.
Establishment.

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

16 USC 1821
note.

SEC. 237. EFFECTIVE DATE.

The amendment made by section 236 shall take effect October 1, 1981, and shall apply with respect to permits issued under section 204 of the Fishery Conservation and Management Act of 1976 after December 31, 1981.

16 USC 1824.

16 USC 1801
note.

SEC. 238. SHORT TITLE.

(a) Effective 15 days after the date of enactment of this title, section 1 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801) is amended to read as follows: “That this Act may be cited as the ‘Magnuson Fishery Conservation and Management Act’.”

(b) Effective 15 days after the date of enactment of this title, all references to the Fishery Conservation and Management Act of 1976 shall be redesignated as references to the Magnuson Fishery Conservation and Management Act.

PART D—MISCELLANEOUS PROVISIONS

22 USC 1980
note.

SEC. 240. APPLICATIONS AND FILINGS FOR COMPENSATION FOR CERTAIN FISHING VESSEL AND GEAR DAMAGE.

(a) IN GENERAL.—If—

(1) any owner or operator of a fishing vessel who suffered, after September 17, 1978, and before the date of the enactment of this title, damage to, or loss or destruction of, such vessel or fishing gear used with such vessel, but did not apply for compensation therefor under section 10 of the Fishermen’s Protective Act of

1967 (22 U.S.C. 1980) within the 60-day period prescribed in subsection (c)(1) of such section; or

(2) any commercial fisherman who suffered, after September 17, 1978, and before the date of the enactment of this title, damages compensable under title IV of the Outer Continental Shelf Lands Act of 1978 (43 U.S.C. 1841 et seq.), but who did not timely file a claim therefor within the 60-day period prescribed in section 405(a) of such Act;

43 USC 1845.

such owner or operator may make application for compensation with respect to such damage, loss or destruction under such section 10, and such commercial fisherman may file a claim for, compensation for such damages under such title IV, to the Secretary of Commerce, within the 60-day period beginning on the date of the enactment of this title.

(b) SPECIAL PROVISIONS.—(1) Notwithstanding any other provision of law—

(A) any application or filing timely made under subsection (a) shall be treated by the Secretary of Commerce as an application timely made under such section 10(c)(1), or as a filing timely made under such section 405(a), as the case may be, with respect to the damage, loss, or destruction claimed; and

22 USC 1980.

43 USC 1845.

(B) any claim for fishing gear loss that was pending on June 1, 1980, before the United States-Union of Soviet Socialist Republics Fisheries Claims Board or the American-Spanish Fisheries Board shall be treated by the Secretary of Commerce as a timely application made, on the date of the enactment of this title, under such section 10(c)(1) for compensation for such loss.

(2) Section 403(c)(2)(A) of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1843(c)(2)(A)) is amended by striking out the semicolon at the end thereof and inserting in lieu thereof "and the party admits responsibility;"

SEC. 241. AMENDMENTS TO FISHERMEN'S PROTECTIVE ACT OF 1967.

Section 10 of the Fishermen's Protective Act of 1967 (22 U.S.C. 1980) is amended as follows:

(1) Subsection (a) is amended by adding at the end thereof the following:

"(4) The term 'resulting economic loss' means the gross income, as estimated by the Secretary, that a fishing vessel owner or operator who is eligible for compensation under this section for damage to, loss of, or destruction of, a fishing vessel or the fishing gear used with such vessel will lose by reason of not being able to engage in fishing, or having to reduce his fishing effort, during the period before the vessel or gear, or both, are repaired or replaced and available for use."

"Resulting economic loss."

(2) Subsection (b) is amended—

(A) by inserting "and for any resulting economic loss", immediately after "or both," in the matter preceding paragraph (1); and

(B) by striking out paragraph (2)(B) and inserting in lieu thereof the following:

"(B) is attributable to any other vessel, whether or not such vessel is a vessel of the United States.

For purposes of subparagraph (B), there shall be a rebuttable presumption that any damage, loss, or destruction of fishing gear is attributable to another vessel."

(3) Subsection (c) is amended by inserting "and resulting economic loss" immediately after "destruction" in the matter appearing immediately before paragraph (1).

(4) Subsection (d) is amended—

(A) by inserting ", and resulting economic loss," immediately after "destruction" in paragraph (1); and

(B) by amending paragraph (2) to read as follows:

"(2) The amount of compensation awarded to any vessel owner under this section shall be—

"(A) the depreciated replacement cost, or the repair cost, whichever cost is less, of the fishing vessel or the fishing gear concerned; and

"(B) 25 percent of any resulting economic loss.

Any amount determined pursuant to subparagraph (A) or (B) shall be reduced to the extent that evidence indicates that negligence by the vessel owner or operator contributed to the cause or the extent of the damage, loss, or destruction and shall be further reduced by the amount of compensation, if any, that the vessel owner or operator has received or will receive with respect to the damage, loss, destruction, or resulting economic loss through insurance, pursuant to any other provision of law, or otherwise."

Approved December 22, 1980.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 96-1243, pt. 1 accompanying H.R. 6959 (Comm. on Merchant Marine and Fisheries) and No. 96-1243, pt. 2 accompanying H.R. 6959 (Comm. on Interior and Insular Affairs).

SENATE REPORT No. 96-667 (Comm. on Commerce, Science, and Transportation and Comm. on Environment and Public Works).

CONGRESSIONAL RECORD, Vol. 126 (1980):

May 5, considered and passed Senate.

Sept. 23, H.R. 6959 considered and passed House; passage vacated and S. 2163, amended, passed in lieu.

Dec. 3, Senate concurred in House amendments with an amendment.

Dec. 4, House concurred in Senate amendment.

Fishermen's Contingency Fund, 1982*

* 50 C.F.R. 296 (1982).

SUBCHAPTER J—CONTINENTAL SHELF

PART 296—FISHERMEN'S CONTINGENCY FUND

- Sec.
- 296.1 Purpose.
- 296.2 Definitions.
- 296.3 Fishermen's contingency fund.
- 296.4 Claims eligible for compensation.
- 296.5 Instructions for filing claims.
- 296.6 NMFS processing of claims.
- 296.7 Burden of proof and presumption of causation.
- 296.8 Amount of award.
- 296.9 Initial determination.
- 296.10 Agency review.
- 296.11 Final determination.
- 296.12 Payment of costs.
- 296.13 Payment of award for claim.
- 296.14 Subrogation.
- 296.15 Judicial review.

AUTHORITY: Pub. L. 97-212 (43 U.S.C. 1841 et seq.).

SOURCE: 47 FR 49600, Nov. 1, 1982, unless otherwise noted.

§ 296.1 Purpose.

These regulations implement Title IV of the Outer Continental Shelf Lands Act Amendments of 1978, as amended (Title IV). Title IV establishes a Fishermen's Contingency Fund to compensate commercial fishermen for damage or loss caused by obstructions associated with oil and gas activities on the Outer Continental Shelf.

§ 296.2 Definitions.

"Area affected by Outer Continental Shelf activities" means the area within a 3-mile radius of any casualty site which:

(a) Includes any portion of a leased block, pipeline, easement, right of way, or other OCS oil and gas exploration, development, or production activity; or

(b) Is otherwise associated (as determined by the Chief, Financial Services Division) with OCS oil and gas activities, such as, for example, expired lease areas, relinquished rights-of-way or easements, and areas used extensively by surface vessels supporting OCS oil and gas activities (areas landward of the OCS are included when such areas meet this criterion).

"Chief, FSD" means the Chief of the Financial Services Division, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

"Citizen of the United States" means any person who is a United States citizen, any State, or any corporation, partnership, or association organized under the laws of any state which meets the requirements for documenting vessels in the U.S. coastwise trade.

"Commercial fisherman" means any citizen of the United States who owns, operates, or is employed on a commercial fishing vessel.

"Commercial fishing vessel" means any marine craft which is documented under the laws of the United States or, if under five net tons, registered under the laws of any State, and used for commercial fishing or activities directly related to commercial fishing.

"Easement" means a right of use or easement granted under 30 CFR section 250.18.

"Fish" means all forms of marine animal and plant life other than marine mammals, birds, and highly migratory species.

"Fishing gear" means any commercial fishing vessel, and any equipment of such vessel.

"Fund" means the Fishermen's Contingency Fund established by Title IV of the Outer Continental Shelf Lands Act Amendments of 1978.

"Holder" means the owner of record of each lease, prelease exploratory drilling permit, easement, or right-of-way or any agent or assignee of an owner.

"Lease" means any authority under section 8 or section 6 of the OCS Lands Act to develop and produce or explore for oil or gas.

"Negligence or fault" includes, but is not limited to, failure to:

(a) Remain outside of any navigation safety zone established around oil and gas rigs and platforms by any responsible Federal agency;

(b) Avoid obstructions recorded on nautical charts or in the Notice to

Mariners or marked by a buoy or other surface marker (casualties occurring within a one-quarter mile radius of obstructions so recorded or marked are presumed to involve negligence or fault of the claimant);

(c) Abide by established rules of the road;

(d) Use proper care; or

(e) Use due care and diligence to mitigate the damage or loss.

"*Outer Continental Shelf*" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in 43 U.S.C. section 1301, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control. Generally, but not in all cases, this includes all submerged lands lying seaward of the territorial sea (3 miles from a State's coastline, or 9 miles from the coast of Texas or Florida).

"*Person*" means an individual, partnership, corporation, association, public or private organization, government, or other entity.

"*Resulting Economic Loss*" means the gross income, as estimated by the Chief, FSD, that a claimant will lose because of not being able to fish, or having to reduce fishing effort, during the period before the damaged or lost fishing gear concerned is repaired or replaced and available for use. This period must be reasonable. This period begins on the date of the casualty and stops on the date the damage could reasonably have been remedied by repair or replacement.

"*Right-of-way*" means any right-of-way granted under section 5(e) of the OCS Lands Act or under 43 CFR 3340.0-5.

"*Secretary*" means the Secretary of Commerce or his designee.

§ 296.3 Fishermen's contingency fund.

(a) *General.* There is established in the Treasury of the United States the Fishermen's Contingency Fund. The Fund is available without fiscal year limitation as a revolving fund to carry out the purposes of Title IV of the Outer Continental Shelf Lands Act Amendments of 1978, as amended.

(b) *Payments into the fund.* Each Holder of an exploration permit, lease,

easement, or rights-of-way for the construction of a pipeline, or a prelease exploration drilling permit issued or maintained under the Outer Continental Shelf Lands Act, in effect on or after June 30, 1982, shall pay assessments to the Fund. All pipeline right-of-way and easements are to be included for assessment except those constructed and operated lines within the confines of a single lease or group of contiguous leases under unitized operation or single operator. Payments will not be required for geological or geophysical permits, other than prelease exploratory drilling permits issued under section 11 of the Outer Continental Shelf Lands Act (43 U.S.C. 1340).

(1) *Assessments to maintain the fund.* When the total amount in the Fund is less than the Chief, FSD, determines is needed to pay Fund claims and expenses, the Chief, FSD, will notify the Secretary of the Interior that additional assessments are needed.

(2) *Billing and collections.* The Secretary of the Interior will calculate the amounts to be paid by each Holder and shall notify each Holder of the dollar amount and the time and place for all payments. Each assessment shall be paid to the Secretary of the Interior no later than 45 days after the Secretary of the Interior sends notice of the assessment.

(3) *Annual assessment limits.* No Holder shall be required to pay in excess of \$5,000 for any lease, permit, easement or right-of-way in any calendar year.

(c) *Moneys recovered through subrogation.* Any moneys recovered by the Secretary through the subrogation of a claimant's rights shall be deposited into the Fund.

(d) *Investments of the fund.* Excess sums in the Fund will be invested in obligations of, or guaranteed by, the United States. Revenue from such investments shall be deposited in the Fund.

(e) *Litigation.* The Fund may sue and be sued in its own name.

§ 296.4 Claims eligible for compensation.

(a) *Claimants.* Damage or loss eligible for Fund compensation must be suffered by a commercial fisherman.

(d) *Damage or loss of fishing gear.* Damage or loss is eligible for Fund compensation if it was caused by materials, equipment, tools, containers, or other items associated with OCS oil and gas exploration, development, or production activities. Damage or loss may be eligible for compensation even though it did not occur in OCS waters if the item causing the damage or loss was associated with oil and gas exploration, development, or production activities in OCS waters.

(c) *Effective date.* These regulations will apply to claims filed on or after June 30, 1982, and to those claims refiled under paragraph (d) of this section.

(d) *Refiled claims.* Any claim filed before June 30, 1982, will be subject to these regulations if:

(1) No final decision had been made on the claim by June 30, 1982; and

(2) The claimant has notified the Secretary in writing by August 11, 1982, of his intent to refile the claim.

(e) *Exceptions.* Damage or loss is not eligible for Fund compensation:

(1) If the damage or loss was caused by the negligence or fault of the claimant;

(2) If the damage or loss occurred prior to September 18, 1978;

(3) To the extent that damage or loss exceeds the replacement value of the fishing gear involved;

(4) For any portion of the damage or loss which can be compensated by insurance;

(5) If the claim is not filed within 60 days after the date the claimant discovers the damage or loss; or

(6) If the damage or loss was caused by an obstruction unrelated to OCS oil and gas exploration, development, or production activities.

§ 296.5 Instructions for filing claims.

(a) *Fifteen-day report required to gain presumption of causation—(1) General.* Damages or losses are presumed to be qualified for compensation if certain requirements are satisfied. One requirement is that a report must be made to NMFS within fifteen

(15) days after the date on which the vessel first returns to a port after discovering the damage or loss. Filing of a fifteen-day report must be followed up by filing a detailed claim.

(2) *When and how to file a fifteen-day report.* To qualify for the presumption of causation, a fifteen-day report must be made to NMFS within fifteen days after the date on which the vessel first returns to a port after discovering the damage or loss. Satisfaction of the fifteen-day requirement is determined by the postmark, if the report is mailed; by the date of a call, if the report is telephoned or radiotelephoned; or, by the date of appearance, if the report is made in person. The fifteen-day report must be made to one of the following NMFS Offices:

Chief, Financial Services Branch, Northeast Region, National Marine Fisheries Service, Post Office Building, Box 1109, Gloucester, Massachusetts 01930, (617) 281-3224

Chief, Fisheries Development Analysis Branch, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, Duval Building, St. Petersburg, Florida 33702, (813) 893-3272

Chief, Fisheries Development Division, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731, (213) 548-2478

Chief, Financial Services Branch, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, N.E., Bin C15700, Seattle, WA 98115, (206) 527-6127

Chief, Fisheries Development, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802, (907) 588-7224

Chief, Financial Services Division, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, DC 20235, (202) 634-4688

(3) *Written confirmation of oral fifteen-day report.* The Chief, FSD, strongly recommends that claimants confirm, in writing, as soon as possible, the substance and accuracy of each fifteen-day report that is made by telephone, radiotelephone, or other oral communication. Address the written confirmation to:

Chief, Financial Services Division, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, DC 20235

(4) *Contents of fifteen-day report.* Each fifteen-day report must include the following information:

- (i) The claimant's name and address;
- (ii) The name of the commercial fishing vessel involved;
- (iii) The location of the obstruction which caused the damage or loss;
- (iv) A description of the nature of the damage or loss;
- (v) The date such damage or loss was discovered;

(vi) If the fifteen-day report is made after the vessel returns to port, the date on which the vessel first returned to port after discovering the damage.

(b) *Form of claim.* Claims must be in writing. Claims may be submitted on NOAA form 88-164. This form may be obtained from any NMFS regional office or from the Chief, FSD. Although claimants are not required to use this claim form, it will probably be to their benefit to do so.

(c) *Who must file, and when and where to file, claims.* All claimants (including those who filed 15-day reports to gain the presumption of causation) must file a claim no later than 60 days after the date the damage or loss is discovered. The term "filed" means delivered in person, or mailed (as determined by the date of the postmark) to the Chief, Financial Services Division, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC 20235. The Chief, FSD, suggests that mailed claims be sent by registered or certified mail, return receipt requested, so the claimant will have a record that the claim was received by the Chief, FSD.

(d) *Aggregating claims.* If more than one commercial fisherman suffers loss or damage from the same incident (for example, when several members of the crew lost income due to loss of fishing time), all claims should be submitted on their behalf by the owner or operator of the commercial fishing vessel involved.

(e) *Contents of claim.* Each claim must be signed by the claimant and must accurately and completely provide the following information:

(1) The name, mailing address, telephone number, citizenship, and occupational status (for example, vessel

owner, operator, or crew member) of each claimant;

(2) The name and Coast Guard documentation number or State registration number of the commercial fishing vessel involved in the damage or loss;

(3) The home port, type, and size of the vessel involved in the casualty;

(4) A full statement of the circumstances of the damage or loss including:

(i) The date when the casualty was first discovered by the claimant,

(ii) The water depth (if known) and visibility at the time and location where the casualty occurred,

(iii) The direction, speed, and activities of the claimant's vessel immediately before, during, and after the casualty (including a full description of both the deployment of any fishing gear which is the subject of the claim and all attempts at retrieval of the gear),

(iv) The names and addresses of all witnesses to the casualty,

(v) The location where the casualty occurred in Loran C coordinates or the next most accurate method of position fixing available to the claimant,

(vi) A description of the item or obstruction (if sighted or recovered) which caused the casualty, and whether or not any surface markers were attached to or near the obstruction. Submit any available photographs of the item or obstruction. State reasons for believing the obstruction is associated with OCS oil and gas activities.

(5) The amount claimed for property damage or loss and a full statement of the type and extent of damage or loss including:

(i) An inventory of all components of fishing gear damaged or lost,

(ii) The date, place, and cost of acquisition of all fishing gear damaged or lost and proof of its purchase (sales receipts, affidavits, or other evidence),

(iii) One estimate from a commercial fishing gear repair or supply company of the present replacement or repair (whichever applies) cost of the damaged or lost fishing gear. If the gear will be repaired by the claimant himself, a detailed estimate by the claimant identifying the repair cost.

(6) The amount claimed for economic loss and the basis for that amount

with supporting documentation, as follows:

(i) Trip tickets for the three vessel trips immediately before the trip during which the casualty was discovered and for the vessel trip immediately following the trip during which the casualty occurred.

(ii) A statement of the amount of time involved on each of the vessel trips above (or if the casualty involves fixed gear, a statement of the number of gear units hauled on each of these trips).

(iii) A statement of the amount of time lost from fishing because of the damage or loss and a full explanation of why this time period is reasonable.

(iv) Documentation of the date replacement gear was ordered and received or the date gear repair began and ended. This documentation may consist of purchase orders, bills of lading, or statements from sellers or repairers.

(7) The amount claimed for other consequential loss or costs (including fees for claim preparation, etc.) with suitable documentation of the amounts claimed (such as invoices, receipts, etc.).

(Approved by the Office of Management and Budget under control number 0648-0082)

[47 FR 49600, Nov. 1, 1982, as amended at 48 FR 57302, Dec. 29, 1983]

§ 296.6 NMFS processing of claims.

(a) *Action by NMFS.* Upon receipt of a claim, the Chief, FSD, will:

(1) Send an abstract of the claim to the Secretary of the Interior;

(2) Send the reported location of any obstruction which was not recovered and retained to the National Ocean Survey, which will inform the Defense Mapping Agency Hydrographic/Topographic Center.

(b) *Actions by the Interior Department.* Upon receipt of an abstract of a claim, the Interior Department will immediately:

(1) Convert the casualty coordinates into latitude and longitude, plot the casualty site, and advise NMFS whether the site is in an area affected by OCS activities; (2) make reasonable efforts to notify all persons known to have engaged in activities associated

with OCS energy activity in the vicinity where the damage or loss occurred.

(c) *Responses to notice of claim.* (1) Each person notified by the Interior Department will, within thirty days after receipt of the notice, advise the Chief, FSD, and the Interior Department whether he admits or denies responsibility for the damages claimed.

(2) Each person notified by the Interior Department who fails to give timely and proper advice of admission or denial of responsibility shall be presumed to deny responsibility for the damages claimed.

(3) If any person admits responsibility, the Chief, FSD, will initiate action to recover from that party any sums paid or to be paid for the claimed damages.

(4) Any person referred to in this section, including lessees or permittees or their contractors or subcontractors, may submit evidence about any claim to the Chief, FSD.

(d) *Failure to meet filing requirements.* The Chief, FSD, may reject any claim that does not meet the filing requirements. The Chief, FSD, will give a claimant whose claim is rejected written notice of the reasons for rejection within 30 days after the date on which the claim was filed. If the claimant does not refile an acceptable claim within 30 days after the date of this written notice, the claimant is not eligible for Fund compensation unless there are extenuating circumstances.

(e) *Proceedings—(1) Location.* Any required proceeding will be conducted within such United States judicial district as may be mutually agreeable to the claimant and the Assistant Administrator, NMFS, or his designee, or if no agreement can be reached, within the United States judicial district in which the claimant's home port is located.

(2) *Powers.* For purposes of any proceeding, the Assistant Administrator, NMFS, or his designee, shall have the power to administer oaths and subpoena witnesses and the production of books, records, and other evidence relative to the issues involved.

(3) *Amendments to claims.* A claimant may amend the claim at any time

before the Chief, FSD, issues an initial determination.

(4) *Criminal penalty for fraudulent claims.* Any person who files a fraudulent claim is subject to prosecution under 18 U.S.C. sections 287 and 1001, each of which, upon conviction, imposes a penalty of not more than a \$10,000 fine and 5 years' imprisonment, or both.

§ 296.7 Burden of proof and presumption of causation.

(a) *Burden of proof.* The claimant has the burden to establish, by a preponderance of the evidence, all facts necessary to qualify his claim, including:

(1) The identity or nature of the item which caused the damage or loss; and

(2) That the item is associated with oil and gas exploration, development, or production activities on the Outer Continental Shelf.

(b) *Presumption of causation.* Notwithstanding the above, damages or losses are presumed to be caused by items associated with oil and gas exploration, development, or production activities on the OCS if the claimant establishes that:

(1) The claimant's commercial fishing vessel was being used for commercial fishing and was located in an area affected by OCS oil and gas exploration, development, or production activities;

(2) A report on the location of the obstruction which caused such damage or loss, and the nature of such damage or loss, was made within fifteen days after the date on which the vessel first returned to a port after discovering such damage;

(3) There was no record on the most recent nautical charts issued by the National Ocean Survey, NOAA, or in any weekly Notice to Mariners issued by the Defense Mapping Agency Hydrographic/Topographic Center, in effect at least 15 days before the date the damage or loss occurred, then an obstruction existed in the immediate vicinity where the damage or loss occurred. In the case of damages caused by a pipeline, the presumption will be available regardless of whether the

pipeline was recorded on charts or in the Notice to Mariners; and

(4) There was no proper surface marker or lighted buoy attached, or closely anchored, to such obstruction.

(c) *Geographic exclusion from presumption of causation.* Damage or loss occurring within a one-quarter mile radius of obstructions recorded on charts or in a Notice to Mariners, or properly marked, is presumed to involve the recorded or marked obstruction.

§ 296.8 Amount of award.

(a) *Actual damages.* The award for damaged fishing gear will be the lesser of the gear's repair cost or replacement cost. The award for lost fishing gear will be the gear's replacement cost.

(b) *Consequential damages.* An award may also include compensation for any damage or loss (except personal injury) that is incurred as a consequence of the fishing gear damage or loss.

(c) *Resulting economic loss.* An award may also include twenty five per cent of the resulting economic loss from a fishing gear damage or loss.

(d) *Attorney, CPA, consultant fees.* An award may also include compensation for reasonable fees paid by the claimant to an attorney, CPA, or other consultant for the preparation or prosecution of a claim.

(e) *Negligence of claimant.* (1) An award will be reduced to the extent that the loss or damage was caused by the negligence or fault of the claimant. (For example, a claimant who sustained \$10,000 in damages and whose negligence or fault was found to be responsible for 40% of the damage would receive \$6,000 in compensation. If the same claimant were responsible for 99% of the negligence or fault that caused the damage, the claimant would receive \$100 in compensation).

(2) Negligence of the owner or operator of the fishing vessel or gear will reduce crewmember awards to the same extent that it reduces an award to the vessel's owner or operator.

(f) *Insurance proceeds.* An award will be reduced by the amount the claimant has, or reasonably would

have, received under a commercial policy of full hull and machinery and protection and indemnity insurance, whether or not such insurance was in effect at the time the casualty occurred.

§ 296.9 Initial determination.

The Chief, FSD will make an initial determination on a claim within 60 days after the day on which the claim is accepted for filing. The initial determination will state:

(a) If the claim is disapproved, the reason for disapproval, or

(b) If the claim is approved, the amount of compensation and the basis on which the amount was determined.

§ 296.10 Agency review.

(a) Within 30 days after the Chief, FSD, issues an initial determination, the claimant, or any other interested person who submitted evidence relating to the initial determination, may ask the Assistant Administrator, NMFS, or his designee, for a review of the initial determination.

(b) The petitioner may submit written or oral evidence within 30 days of filing the petition for review.

§ 296.11 Final determination.

(a) If a petition for review of an initial determination is filed within 30 days after the date the Chief, FSD, issues an initial determination, the Assistant Administrator, NMFS, or his designee will conduct a review of the initial determination, and will issue a final determination no later than 60 days after receipt of the request for review of the initial determination.

(b) If a petition for review of an initial determination is not filed within 30 days after the day on which the Chief, FSD, issues an initial determination, the initial determination will become a final determination.

§ 296.12 Payment of costs.

(a) *By person denying responsibility for damage.* Any person who is notified by the Interior Department and falls to respond or denies responsibility for the damages claimed will pay the costs of the proceedings if such person is subsequently found to be responsible for the damage claimed.

(b) *By the claimant.* Any claimant who files a claim will pay the cost of the proceedings if such person is subsequently found to be responsible for the damage claimed.

(c) *By person denying responsibility for damage and the claimant.* If more than one party is found to have responsibility for the damage claimed, then the cost of the proceedings will be apportioned between them.

§ 296.13 Payment of award for claim.

(a) Upon an initial determination, the Chief, FSD, shall immediately disburse the claim awarded if the claimant:

(1) States in writing that he will not request review of the initial determination; and

(2) Signs an agreement to repay all or any part of the award if the award should for any reason be subsequently reduced.

(b) If the claimant does not submit the statement and agreement specified above, the Chief, FSD, will not disburse the award until 30 days after issuance of the initial determination.

§ 296.14 Subrogation.

(a) Upon payment of a claim, the Chief, FSD, will obtain a subrogation agreement signed by the claimant which:

(1) Assigns to the Fund the claimant's rights against third parties; and

(2) Provides that the claimant will assist the Fund in any reasonable way to pursue those rights.

(b) Collection of subrogated rights. If a reasonable chance of successful collection exists, NMFS will refer any subrogated rights to the Justice Department for collection.

(c) Any moneys recovered through subrogation shall be deposited into the Fund.

§ 296.15 Judicial review.

Any claimant or other person who is aggrieved by a final determination may, no later than 30 days after the determination, seek judicial review of the determination in the United States District Court for such judicial district as may be mutually agreeable to the parties concerned or, if no

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agreement can be reached, in the judicial district in which the claimant's home port is located, United States District Court for the

Regional Fishery Management Councils, 1982*

* 50 C.F.R. §601 (1982).

**PART 601—REGIONAL FISHERY
MANAGEMENT COUNCILS**

Subpart A—General

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AUTHORITY: 16 U.S.C. 1801 *et seq.*

Subpart A—General

§ 601.1 Purpose.

The regulations in this part implement certain portions of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson Act), which, among other things, establishes eight Regional Fishery Management Councils (Councils). The principal responsibilities of these councils are to provide the nucleus of a national fishery conservation and management program through the systematic development of fishery management plans and amendments to such plans, to submit periodic and other reports to the Secretary, to continually review and revise assessments as to optimum yield and the total allowable level of foreign fishing, and to conduct other necessary and appropriate activities with respect to the conservation and management of the fisheries within their geographical area of concern. The Councils act as independent bodies, whose actions must conform to the uniform standards established by Part 601. Part 601 describes matters pertaining to the establishment, organization, practices, and procedures of the Councils.

[42 FR 34452, July 5, 1977, as amended at 48 FR 56591, Dec. 22, 1983]

§ 601.2 Definitions.

The terms used in these regulations shall have the meanings that are prescribed in section 3 of the Act. In addition, the following definitions apply:

(a) *Administrative and technical support services.* The administrative, technical, legal, and scientific services needed by the Councils, authorized by the Secretary, and provided by the government to assist the Councils in the fulfillment of their various functions required by the Act.

(b) *Administrator.* The Administrator of the National Oceanic and Atmospheric Administration.

(c) *Advisory group.* The Scientific and Statistical Committees or advisory panels established under the Act.

(d) *Associate Administrator.* The Associate Administrator for Marine Resources, National Oceanic and Atmospheric Administration.

(e) *Confidential.* Confidential means containing information, the unauthorized disclosure of which could be prejudicial or harmful. Depending on the context within which it is used, the word:

(1) Identifies information having an official security classification of Confidential or higher relating to the protection of national security, or (2) describes information/data that is identifiable with an individual, business, or some other entity and that is accepted from any person by the Secretary under a stipulation that limits disclosure.

(f) *Council.* Regional Fishery Management Council.

(g) *Director.* The Director of the National Marine Fisheries Service.

(h) *Federal budget cycle.* The 33-month process of formulating and executing the Federal budget.

(i) *Fishery management plan.* A document that contains a systematic description of a given fishery and that sets forth the objectives and strategies for the management of the fishery.

(j) *Highly migratory species.* The following, among others, are considered highly migratory species for the purposes of the Act:

TUNA

Albacore, *Thunnus alalunga*;
Bigeye tuna, *Thunnus obesus*;
Bluefin tuna, *Thunnus thynnus*;
Southern bluefin tuna, *Thunnus maccoyii*;
Yellowfin tuna, *Thunnus albacares*; and
Skipjack tuna, *Euthynnus pelamis*.

(k) *Regional Director.* The Regional representatives of the Director. There are five regional offices of the National Marine Fisheries Service whose Regional Directors serve on the various Councils as specified by the Act.

[42 FR 34452, July 5, 1977, as amended at 42 FR 36980, July 18, 1977; 48 FR 56591, Dec. 22, 1983]

Subpart B—Geographical Boundaries

§ 601.11 General.

(a) *Fishery conservation zone.* The Act creates a zone contiguous to the territorial sea, which is called the fishery conservation zone. The outer boundary of the zone is 200 nautical miles from the baseline from which the territorial sea is measured and the inner boundary is a line coterminous with the seaward boundary of each of the coastal States. (See 43 U.S.C. 1301(b) and 1312 for definition of "seaward boundary".)

(b) *Scope.* (1) The boundaries described in § 601.12 delineate the geographical area of authority of adjacent Council within this fishery conservation zone.

(2) Within the geographical area of authority, each Council shall develop fishery management plans for each fishery involving the following categories of fishery resources:

(i) All fish within this zone, except "highly migratory species";

(ii) All anadromous species throughout their migratory range, except within a conservation zone recognized by the United States; and

(iii) Continental Shelf fishery resources.

(c) *Jurisdiction*—(1) *State.* Generally the Act does not diminish the fishery jurisdiction of any State within its own boundaries, nor does it extend State fishery jurisdiction beyond a State's seaward boundary.

(2) *Intercouncil.* In any case in which the range of stock or a fishery

extends beyond the geographical area of authority of any one Council, as defined in § 601.12, the Secretary is authorized to designate the Council that shall prepare the fishery management plan for such a fishery, after consultation with the Councils concerned. When such a plan includes waters adjacent to the States represented on more than one Council, the Council thus designated should consult with the other affected Council(s). The Secretary may require that a plan be prepared jointly by the Councils concerned. In this case, any plan or amendment must, before being submitted to the Secretary, shall be approved by a majority of the voting members, present and voting, of each participating Council.

[42 FR 34452, July 5, 1977]

§ 601.12 Intercouncil boundaries.

(a) *New England and Mid-Atlantic Fishery Management Councils*—(1) *Description.* The boundary commences at the intersection point of Connecticut, Rhode Island and New York at 41°18'18.249" latitude and 71°54'28.477" longitude and proceeds S 37°22'32.75" E to the points of intersection with the outward boundary of the fishery conservation zone as specified in Title I, section 101 and Title II, section 202(d) of the Act.

(2) *Method of determination.* The boundary between the New England and Mid-Atlantic Councils continues the agreed state boundary between New York and Rhode Island (to which Congress granted consent on July 1, 1944, Pub. L. 78-399) seaward to the 200 mile boundary of the fishery conservation zone.

(b) *Mid-Atlantic and South Atlantic Fishery Management Councils*—(1) *Description.* The boundary commences at the seaward boundary between the States of Virginia and North Carolina, and proceeds due East to the point of intersection with the outward boundary of the fishery conservation zone as specified in Title I, section 101 and Title II, section 202(d) of the Act.

(2) *Methods of determinations.* The boundary between the Mid-Atlantic and South Atlantic Councils continues the agreed State boundary between

Virginia and North Carolina seaward to the 200-mile boundary of the fishery conservation zone and, when drawn, would be a line of constant latitude described as 36°33'00.8"N.

(c) *South Atlantic and Gulf of Mexico Fishery Management Councils*—(1) *Description*. The boundary between the Gulf of Mexico and the Atlantic Ocean begins at the intersection of the outer boundary of the FCZ and the eighty-third meridian west of Greenwich (83° W. longitude), proceeds northward along that meridian to 24°35' N. latitude (near the Dry Tortugas Islands), thence eastward along that parallel of latitude, through Rebecca Shoal and the Quicksand Shoal, to the Marquesas Keys, and then through the Florida Keys to the mainland at the eastern end of Florida Bay, the line so running that the narrow waters within the Dry Tortugas Islands, the Marquesas Keys and the Florida Keys, and between the Florida Keys and the mainland, are within the Gulf of Mexico.

(2) *Method of determination*. The boundary between the Gulf of Mexico and South Atlantic Councils reflects the determination in *United States v. Florida*, 425 U.S. 791 (1978), regarding the line of demarcation between the Atlantic Ocean and the Gulf of Mexico.

(42 FR 36980, July 18, 1977, as amended at 49 FR 30203, July 27, 1984)

Subpart C—Uniform Standards for Organization, Practices and Procedures

§ 601.21 General.

(a) *Purpose*. Section 302(f)(6) of the Act requires each Council to determine its own organization, practices and procedures for carrying out its functions in accordance with such Uniform Standards as are prescribed by the Secretary. The regulations contained in this subpart provide the Uniform Standards in accordance with which the Councils shall operate.

(b) *Applicability of other laws*—(1) *National Environmental Policy Act of 1969* (42 U.S.C. 4321). The National Environmental Policy Act (NEPA) sets forth the strategy of the Congress to

achieve coordination of Federal activities and environmental considerations. NEPA's basic purpose is to insure that, in addition to technical and economic considerations, Federal officials weigh and give appropriate consideration to unquantified environmental values in policy formulation, decisionmaking and administrative actions. Section 102(2)(C) of NEPA requires preparation of a detailed environmental impact statement in the case of major Federal actions that significantly affect the quality of the human environment. Procedures for compliance with NEPA in the preparation and submission of fishery management plans and amendments to such plans are set forth in § 602.6 [Reserved].

(2) Provisions of two interrelated laws affect Council practices and procedures concerning public access to government records. These laws are—

(i) *The Freedom of Information Act* (5 U.S.C. 552(b)). The Freedom of Information Act (FOIA) provides for public access to records of the executive branch of the Federal Government, and to records generated at the request of the Federal Government. Nine groups of exceptions are provided that allow the withholding of information. Application of FOIA is covered more specifically in Part 603.

(ii) *The Privacy Act* (5 U.S.C. 552(a)). This Act provides to individuals certain rights of access to records kept about them, and at the same time requires that the confidentiality and use of the information be strictly regulated, placing restrictions on the collection, retention, and use of personal information. Specific application of this Act is found in Part 603.

(3) *Coastal Zone Management Act of 1972, as amended* (16 U.S.C. 1451 et seq.). The principal objective of this Act is to encourage and assist States in developing coastal zone management programs, to coordinate State activities, and to safeguard the regional and national interests in the coastal zone. While the coastal zone does not extend beyond the territorial sea, activities taking place beyond the territorial sea may impact on the coastal zone and thus come within the influence of coastal zone planning. In the preparation of fishery management

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plans, Councils should be particularly cognizant of the provisions of section 307(c) of this Act that require that any Federal activity directly affecting the coastal zone of a State be consistent with that State's approved coastal zone management program. Thus, Councils will need to coordinate their planning actions with the appropriate State agencies involved in coastal zone program development.

[42 FR 34452, July 5, 1977, as amended at 48 FR 56589, Dec. 22, 1983]

§ 601.22 Organization.

(a) *General.* This part addresses such questions as organization of the Council members, administrative staff and advisory panels.

(b) *Council members.* The Councils consist of voting and nonvoting members or their designees, as specified in the Act.

(1) *Terms.* Members appointed following initial constitution of the Councils serve for a term of three years. An individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term. The anniversary date for measuring terms of membership is August 11.

(2) *Designees.* (i) The Act authorizes the principal State officials, the NMFS Regional Directors, and the nonvoting members to designate individuals to attend Council meetings in their absence. Only one designee per Council may be so specified by each of the above officials.

(ii) A designee may serve for all or part of a Council meeting in the absence of the individual he or she is replacing and has the same voting power as his or her designator.

(iii) If circumstances require, the Council member may change his or her designee. In such case, the Chairman of the Council must be notified and given in writing, in advance of the meeting at which the designee will represent the Council member, the name, address, and position of the individual designated. A designee may not name a designee for himself or herself.

(iv) Designees without appropriate security clearance may not attend

meetings closed for security reasons, nor handle classified material. (See § 601.23(e)(3).)

(v) Reimbursement of actual expenses and compensation, as described in § 601.23(f), associated with travel to any meeting shall be limited to the member, or, in the case of the absence of the member, one designee. A designee who serves for part of a Council meeting may receive reimbursement of actual expenses and compensation associated with necessary travel and attendance at that part of a Council meeting wherein the member is absent.

(3) *Designation of regional directors.* The Regional Directors, NMFS shall, in accordance with the Act, serve as voting members on the Councils as follows:

Council	Regional Director
New England.....	Northeast region.
Mid-Atlantic.....	Do.
South Atlantic.....	Southeast region.
Caribbean.....	Do.
Gulf of Mexico.....	Do.
Pacific.....	Northwest region.
North Pacific.....	Alaska region.
Western Pacific.....	Southwest region.

(4) *Appointments.* (i) Inasmuch as each year approximately one-third of a Council's appointed membership will lapse, new members will be appointed by the Secretary or the Secretary's delegate from lists of nominees submitted by the Governors of each applicable constituent state by March 15 of each year. The Governors are responsible for determining that their nominees meet the qualification requirements of the Magnuson Act and for providing appropriate documentation for the Secretary or the Secretary's delegate to make a reasoned choice. If the Secretary or the Secretary's delegate determines that an individual is not qualified, the Secretary or the Secretary's delegate will notify the appropriate Governor of that determination. The Governor will then submit a revised list or resubmit the original list with an additional explanation of the qualifications of the nominee in question.

(ii) There are two categories of seats for which appointed voting members

may be eligible: "obligatory" and "at-large." Each Council constituent State has one obligatory seat. When the term of an obligatory State member expires, the Governor of that State is required to submit at least three nominations from which the selection of a replacement will be made by the Secretary or the Secretary's delegate. When the term of an at-large State member expires, the Governor of each member State of a Council shall submit at least three nominations for each vacancy, and the selection will be made by the Secretary or the Secretary's delegate from among the collective nominations by the Governors of all member States. Any individual whose term is expiring may be renominated for consideration.

(iii) The number of individuals who must be nominated by a Governor shall be equal to at least three times the number of vacancies available, and each such nominee shall be considered as available for any such vacancy. However, in a case where the terms of both an obligatory member and an at-large member expires the same year, the Governor of the State holding the expiring obligatory seat may indicate that remaining nominees for an obligatory seat may be considered for an at-large seat.

(iv) The procedures in § 601.22 (b)(4)(1) through (iii) also apply when a vacancy occurs prior to the normal expiration of a term of membership of a voting member appointed by the Secretary or the Secretary's delegate.

(v) If a Governor fails to submit a list of at-large nominees within the time allotted, then the new at-large member(s) may be appointed from the list of names submitted by the Governors of the other applicable constituent States.

(vi) The Secretary may remove for cause any Secretarially-appointed member of a Council if the Council concerned first recommends removal by an affirmative vote of not less than two-thirds of the Council members who are voting members. The recommendation must be in writing and include a statement of the reasons upon which the recommendation is based.

(5) *Council organization.* The Chairman shall be elected from among the

voting members by a majority vote of the voting members present and voting. The term of office for the Chairman may not exceed one year; however, the Chairman is eligible for re-election. The Council may establish other officers as deemed necessary and set their terms of office. The Council may appoint standing and ad hoc committees from among the voting and nonvoting members as it deems necessary for the conduct of Council business. Such committees shall conform to the procedures for assuring open meetings specified for the Council.

(c) *Administrative staff.* Each Council shall appoint an Executive Director and such other full and part time administrative employees as the Secretary determines are necessary to the performance of its functions, and which are consistent with budgetary limitations. However, the number of such employees may not exceed seven except as approved by the Director, NMFS. The Executive Director and staff are responsible to the Chairman of the Council.

(1) *Executive director—(1) Duties.* Each Council, through its Chairman, shall assign such duties to the Executive Director as it deems appropriate, consistent with these uniform standards.

(ii) *Compensation.* The administrative responsibilities, coupled with the complexity of the workload of the Council, will influence the pay level appropriate to a given Executive Director position, provided that compensation shall not exceed the yearly rate for the highest step of a GS-15 in the General Schedule.

(2) *Other administrative staff—(1) Minimum.* As a minimum, each Council shall have an administrative staff consisting of an executive director, an administrative officer, and a secretary.

(ii) *Additional staff.* Additional administrative staff above the minimum prescribed above will vary by Council because of differences in workload and availability of resources. The number and types of additional positions will also vary over time as the work of the Council is defined during its initial phase of operation.

(d) *Scientific and statistical committee.* Each Council shall establish and maintain, and appoint the members of, a Scientific and Statistical Committee to assist it in the development, collection and evaluation of such statistical, biological, economic, social and other scientific information as is relevant to such Council's development or amendment of any fishery management plan. The Council is authorized to pay the actual expenses of such Committee members while engaged in Council business.

(1) *Committee function.* The Scientific and Statistical Committee provides expert scientific and technical advice to the Regional Council on the development of fishery management policy, on the preparation of fishery management plans, and on the effectiveness of such plans once in operation. The Committee aids the Council in identifying scientific resources available for the development of plans, in establishing the objectives of plans, in establishing criteria for judging plan effectiveness and in the review of plans.

(2) *Committee organization.* The members of the Committee and a Chairman are appointed by the Council. Membership shall be multidisciplinary, including both biological and social scientists from the Federal, State, and private scientific community who are knowledgeable about the fisheries to be managed. The size of the Committee is discretionary within the resources budgeted to the particular Council. The Committee shall meet in the area encompassed by the Council's constituent States, with the approval of the Chairman of the Council. No staff is assigned to this Committee but staff support may be requested from the Chairman of the Council or the Executive Director.

(e) *Fishery advisory panels.* Each Council is authorized to establish such other advisory panels as are necessary or appropriate to assist it in carrying out its functions under the Act. The Councils are authorized to pay the actual expenses of the members of these panels while engaged in the performance of Council business.

(1) *Panel function.* Fishery Advisory Panels are authorized principally to

obtain the pragmatic advice and counsel of the people most affected by, or interested in, Council matters of fishery management policy; on the preparation of fishery management plans; on their review prior to submission to the Secretary; and on their effectiveness once in operation. These Panels aid the Council in establishing both the goals and objectives of plans as well as the criteria for judging plan effectiveness, and serve as a communication link with those who must operate under the management regime.

(2) *Panel organization.* The members and a Chairman are appointed by the Council. The membership of each Panel shall be composed of a balanced representation of the interests of those who are either actually engaged in the harvest, processing or consumption of, or are knowledgeable and interested in the conservation and management of, the applicable fishery or stock(s) of fish. The size of each Panel is discretionary within the resources available to the particular Council, but each panel must be of sufficient size and number to permit a balanced representation of interests. It is suggested for the purpose of minimizing administrative requirements that each Council establish one broad-based advisory panel. Subpanels may be used to provide advice on individual fisheries on unique fishery resources under Council consideration. The Panels shall meet in the area encompassed by the Council's constituent States as deemed necessary by the Council Chairman. No staff is assigned to these Panels, but staff support may be requested from the Chairman of the Council or the Executive Director.

[42 FR 34452, July 5, 1977, as amended at 48 FR 56590, Dec. 22, 1983]

§ 601.23 Administrative practices and procedures.

(a) *General.* The Act directs the Secretary to provide the Councils with administrative support services as are necessary for their effective functioning. The Administrator of the General Services Administration is directed by the Act to furnish each Council with such offices, equipment, supplies and services as he is authorized to furnish

to any agency or instrumentality of the United States. All Federal agencies are authorized to detail personnel on a reimbursable basis to the Councils after consulting with the Director, NMFS. (See paragraphs (d)(3) and (e)(2) of this section.) Uniform Standards in this section are provided in order to expedite the delivery of this support with a minimum burden on the substantive work of the Councils.

(b) *NOAA field units.* NOAA field units are assigned to provide services and support to each Council as follows:

Council	Servicing field unit
New England.....	Northeast region, NMFS.
Mid-Atlantic.....	Do.
South Atlantic.....	Southeast region, NMFS.
Caribbean.....	Do.
Gulf of Mexico.....	Do.
Pacific.....	Northwest region, NMFS.
North Pacific.....	Alaska region, NMFS.
Western Pacific.....	Southwest region, NMFS.

These NOAA field units are authorized to provide for budgetary, accounting, personnel, and procurement support to their respective Councils, and may act as liaison between the Councils and other Federal agencies.

(c) *Budgeting, funding, and accounting*—(1) *Federal funds.* The funding for the administrative and technical support of Council operations is included in the budget of the Department of Commerce and, through that agency, in the budgets of NOAA and NMFS. The funding requirements for the Councils are subject to regular budgetary review procedures. Annual grants will provide such federal funds as the Secretary determines are necessary to the performance of the functions of the Councils and consistent with budgetary limitations.

(2) *Funds from other sources.* [Reserved]

(3) *Financial procedures and standards.* The Councils shall be governed by the requirements of Office of Management and Budget Circular A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations" (41 FR 32016) as published July 30, 1976, and the following standards:

(i) *Procurement.* The Councils shall establish their own procurement policies and procedures, which shall be included in the Statement of Organization, Practices, and Procedures (see § 601.25). However, all Councils shall adhere to the requirements set forth in OMB Circular A-110, Attachment 0, paragraphs 3 and 4.

(ii) *Financial management system.* The fiscal year will coincide with the Federal Government's fiscal year. A Cash Receipts and Disbursement Journal with a monthly Summary of Accounts is required as a minimum bookkeeping system. In addition, a Statement of Income and Expenses for the Council shall be prepared monthly for the Council membership. Each cash disbursement shall be approved by an individual(s) designated by the Council Chairman. The approval authority shall be included in any Statement of Organization, Practices, and Procedures published after the effective date of this regulation. A uniform classification of accounts shall be used by all Councils in maintaining accounting records in accordance with the Model Accounting System issued by NMFS on November 26, 1976 and provided to the Councils. When budget estimates are submitted to the Director, the uniform account classification titles shall be used.

(iii) *Advance of funds and letters of credit.* Grant funds in an amount less than \$250,000 will be disbursed from the Department of the Treasury upon receipt in NOAA of a properly executed Advance of Funds request (Form SF-220). OMB Circular A-110 limits the amounts of funds that can be disbursed and requires that transfer of funds from the Treasury be made as soon as possible to the time of disbursement by the grantee. A Letter of Credit will be established for grants in excess of \$250,000. Drawdowns from the Treasury will be made through the commercial bank and a Federal Reserve Bank. The Council shall initiate each drawdown at approximately the same time that checks are issued by the Council in payment of Council liabilities. Drawdowns should not be made more frequently than daily or in amounts less than \$10,000. These requirements are under the Department

of the Treasury Circular 1075, "Regulations Governing Withdrawal of Cash from the Treasury for Advances Under Federal Grants and Other Programs" (38 FR 5242) as published February 27, 1973.

(iv) *Audit.* Independent audit is required not less than every two years. Annual audits may be performed at the Council's discretion. All Councils are subject to audit by the Secretary of Commerce and the Comptroller General of the United States. The scope of audit may include: Conduct of financial operations; compliance with applicable laws and regulations; economy and efficiency of administrative procedures; and achievement of results.

(v) *Financial reports.* Reports are required which summarize total expenditures made and Federal funds unexpended for each award, and the status of Federal cash received. The Report of Federal Cash Transactions (Form SF-272) is required from each Council quarterly and should be submitted to the NOAA Grants Officer no later than 15 working days after the end of the quarter. A final report is required upon completion of the grant, to be submitted within 90 days after completion of the grant. The Financial Status Report (Form SF-269) is required from each Council quarterly and should be submitted to the NOAA Grants Officer no later than 15 working days after the end of the quarter. A final report is required upon completion of the grant. Guidance for the preparation of these reports and other financial reporting procedures is in Attachment G of OMB Circular A-110.

(d) *Employment practices.* The following sets forth the responsibilities of the Councils with regard to personnel matters and establishes personnel related standards to be used by the Secretary in analyzing Council budgets.

(1) *Staffing.* Each Council may appoint and assign duties to an Executive Director and such other full and part time administrative employees as the Secretary determines are necessary to the performance of its functions. Each position must be justified during the budget process described in OMB Circular A-110. Descriptions of

the work to be performed shall be submitted in accordance with § 601.23(d)(6) dealing with salary and wage administration.

(2) *Experts and consultants.* Each Council may contract with experts and consultants as needed and within their respective budgets to provide technical assistance. Such experts and consultants may not provide services on a permanent basis (see § 601.231(e)(2)).

(3) *Details of Government employees.* Each Council may request the head of any Federal agency to detail to such Council on a reimbursable basis any personnel of such agency to assist the Council in the performance of its functions under the Act (see § 601.23(e)(2)). The length of such details shall be mutually determined by the Council, the Federal employee and his or her agency. Federal employees so detailed retain all benefits, rights and status as they are entitled to in their regular employment. The Councils may negotiate arrangements with State or local governments to utilize employees of those governments.

(4) *Nondiscrimination.* All activities of the Council must operate under a policy of equal employment opportunity. Council staff positions shall be filled solely on the basis of merit, fitness, competence, and qualifications. Employment actions shall be free from discrimination based on race, religion, color, national origin, sex, age, or physical handicap.

(5) *Personnel actions.* Subject to these instructions, and within budgetary constraints, the Councils may establish positions, recruit, hire, compensate and dismiss personnel. Involuntary separation should be for cause alone, with reasonable notice given to the employee.

(6) *Salary and wage administration.* (i) In setting rates of pay for Council staff, the principle of equal pay for equal work shall be followed. Variations in basic rates of pay should be in proportion to substantial differences in the difficulty and responsibilities of the work performed.

(ii) A cost of living allowance may be applied to the salaries of Council members and staff whose post of duty is in one of the following areas: Alaska, Hawaii, Guam, Virgin Islands,

and Puerto Rico. The rate of cost of living allowance may not exceed that paid by the Federal Government in the same area. The current rates may be obtained from the applicable NOAA field unit.

(iii) The duties of any new position shall be contained in a brief description to be submitted to the NOAA personnel office servicing the NMFS Regional Office assigned to a Council prior to the submission of a budget in which the salary of that position is requested. The Council will be provided a salary range appropriate to the position and a determination of the applicability of the Fair Labor Standards Act. The Council then may fill the position at any salary level within that range, except that, unless the recruitment of exceptionally qualified employees is hampered, the policy of hiring at the beginning rate shall be recognized. The annual pay for any staff position may not exceed the current rate for the top step of grade 15 of the Federal General Schedule at any time. After a position has been filled, an employee may be promoted annually and recognized for superior performance in accordance with Council policies.

(7) *Leave.* Employees of the Council should be granted paid leave for holidays, vacations or exigencies, sickness, and civil duties (jury, military reserve obligations) as determined by the Council. Paid annual leave should not exceed 20 days per year, and sick leave should not exceed 13 days per year. Earned annual and sick leave may be accumulated from year to year.

(8) *Employee benefits.* The Council should provide its employees the opportunity to participate in group medical insurance, life insurance and retirement plans and pay a reasonable proportion of the cost of such plans.

(9) *Conduct.* The Councils are responsible for maintaining high standards of ethical conduct among themselves, their staffs, and their advisory groups. Such standards should include the following principles:

(i) No employee of the Council shall use his or her official authority or influence derived from his or her position with the Council for the purpose of interfering with or affecting the

result of an election to or a nomination for any national, state, county, or municipal elective office.

(ii) No employee of the Council shall be deprived of employment, position, work, compensation, or benefit provided for or made possible by the Act on account of any political activity or lack of such activity in support of or in opposition to any candidate or any political party in any national, state, county, or municipal election, or on account of his or her political affiliation.

(iii) No Council member or employee shall pay, or offer, or promise, or solicit, or receive from any person, firm, or corporation, a contribution of money or anything of value in consideration of either support or the use of influence or the promise of support, or influence in obtaining for any person, any appointive office, place or employment under the Council.

(iv) No employee of the Council shall have a direct or indirect financial interest that conflicts with the fair and impartial conduct of his or her council duties.

(v) No Council member, employee of the Council or member of a Council advisory group shall use or allow the use, for other than official purposes, of information obtained through or in connection with his or her Council employment that has not been made available to the general public.

(vi) No Council member or employee of the Council shall engage in criminal infamous, dishonest, notoriously immoral or disgraceful conduct prejudicial to the Council.

(vii) No Council member or employee of the Council shall use Council property on other than official business. Such property shall be protected and preserved from improper or deleterious operation or use.

(10) *Personnel files.* A file for each council member containing appointment papers, security reports, biographical data and other official papers will be centrally maintained in NOAA under security and safeguard conditions required of files subject to the Privacy Act. This file will be available to the member, and to other persons only when a need to know has been established. Each Council should maintain in its office, personnel files

on their employees and experts and consultants under contract under appropriate safeguards in accordance with the Privacy Act.

(11) *Security investigations.* When it is anticipated that security classified information will be kept or handled in council offices, certain employees shall be designated to be permitted access to the information in accordance with Federal standards and shall receive appropriate security clearance from the Office of Investigation and Security of the Department of Commerce.

(e) *Personnel*—(1) *Council staff.* The Councils may, consistent with the standards of employment practice standards contained in § 601.23(d), establish positions and recruit, hire, compensate, and dismiss personnel. The personnel procedures of each Council will be subject to audit periodically.

(2) *Ad Hoc staff support.* All Federal agencies are authorized by section 302 (f)(2) of the Act to detail personnel to the Council on a reimbursable basis. Any Council requests to the heads of such agencies must contain the purpose of the detail, the length of time of the detail, the compensation to be paid, and the stipulation that the Director, NMFS, be consulted prior to granting the request. Copies of this correspondence shall be transmitted to the Director, NMFS, through the appropriate NOAA Field Office to facilitate such consultation. Legal Counsel on a continuing basis is available from the regional office of the NOAA Office of General Counsel. Councils are expected to obtain legal counsel from NOAA before seeking other legal counsel. Other experts and consultants including legal counsel, may be used as the Council considers appropriate, consistent with budgetary limitations (see § 601.23(d)(2)).

(3) *Council access to security classified material.* The security investigation that is routinely conducted at the time a nominee to the Council is appointed is the basis for authorizing access on a need-to-know basis to material classified Confidential. Normally this should be sufficient for Council purposes (see also § 601.22(b)(2)(iv)). Clearance for higher classifications may be granted, following regular Fed-

eral procedures, by the Secretary. Access to security classified material is governed by security regulations and procedures pursuant to Executive Order 11652, effective June 1, 1972. Need-to-know is determined by the authority having custody of the material. Persons who are not members of the Council, including Council staff, and members of advisory groups, must possess the appropriate security clearance before they may be present when classified materials are discussed or examined. Such clearances will be requested through the appropriate NOAA field unit.

(4) *Council procedures to protect confidentiality of statistics.* Each Council will establish appropriate procedures applicable to it and to its committees and advisory panels for ensuring the confidentiality of the statistics that may be submitted to it by Federal or State authorities, and may be voluntarily submitted to it by private persons; including, but not limited to, procedures for the restriction of Council employee access and the prevention of conflicts of interest; except that such procedures must, in the case of statistics submitted to the Council by a State, be consistent with the laws and regulations of that State concerning the confidentiality of such statistics.

(f) *Compensation and expense*—(1) *Compensation.* The voting members of each council who are not employed by the Federal Government or any State or local government shall receive compensation at the daily rate for a GS-18 in the General Schedule when engaged in the actual performance of duties as assigned by the Chairman of the Council.

(2) *Expenses.* Council voting members, the nonvoting Executive Director of the Marine Fisheries Commission for the geographical area concerned, (if any), the additional nonvoting member of the Pacific Council, and the members of the advisory panels shall be reimbursed for actual expenses associated with travel on official Council business. The Council may also pay the transportation and expenses, on an actual expense per diem basis, of invited experts and consultants, and Council staff. All such expenses must be authorized by the

Chairman of the Council or the Executive Director and be supported by detailed vouchers attested to by the person incurring the expenses. Individual receipts, except for hotel receipts, are not required. Foreign travel must have the prior consent of the Administrator.

(3) *Actual expense defined.* Actual expenses include transportation by air coach, rail coach, bus or privately-owned vehicle (automobile or private plane—reimbursed on a per mile basis); room and meals within a reasonable limit to be established by the NOAA Travel Handbook; and incidental expenses such as taxi fares, parking and telephone calls on official business.

(g) *Reporting.* The Councils may submit such periodic reports as the Council deems appropriate and any other relevant report which may be requested by the Secretary. Requirements for periodic financial or other reports for purposes of NOAA budgetary control and reporting are described in individual grants issued to the Councils and in § 601.23(c)(3).

[42 FR 34452, July 5, 1977, as amended at 42 FR 36980, July 18, 1977; 48 FR 56590, Dec. 22, 1983]

§ 601.24 Operational practices and procedures.

(a) *General.* In fulfilling the Council's responsibilities and functions, the Council members will meet in plenary session, in working groups, or individually to hear statements in order to clarify issues, gather information or make decisions regarding material before them. This section establishes uniform standards for the conduct of those activities to meet the requirements of the Magnuson Act and to facilitate the exercise of Council responsibilities. This section applies to any formally constituted work group or team which meets at the direction of the Council.

(b) *Meetings—(1) General.* The Councils will meet at the call of the Chairman or upon request of a majority of the voting members. Advisory groups will meet the approval of the Chairman of the Council. Emergency meetings will be held at the call of the Chairman or equivalent presiding offi-

cer. The Councils will develop a mechanism for coordinating requests for advice from their advisory groups through the Executive Director.

(2) *Notice.* Timely public notice of each regular meeting and each emergency meeting, including the time, place, and agenda of the meeting, will be published in local newspapers in the major fishing ports of the Council's region (and in other major fishing ports having a direct interest in the affected fishery) and such notice may be given by such other means as will result in wide publicity. Timely notice of each regular meeting will also be published in the FEDERAL REGISTER.

(3) *Record.* Minutes of each meeting will be kept and will contain a record of the persons present, an accurate description of matters discussed and conclusions reached, and copies of all statements filed.

(4) *Conduct.* (i) Meetings will be conducted in a manner to permit the greatest possible participation by all members of the Council and the public. Interested persons will be permitted to present oral or written statements regarding the matters on the agenda at meetings. Decisions by consensus are permitted except where the issue is Council approval or amendment of a fishery management plan (including any proposed regulations), or comments for the Secretary on foreign fishing applications or fishery management plans developed by the Secretary. In these cases, a vote is required.

(ii) A majority of the voting members of any Council shall constitute a quorum for Council meetings, but one or more such members designated by the Council may hold hearings.

(iii) When there is a vote, the majority of the voting members present and voting will rule. Voting by proxy is not permitted. Where unanimity is required, the unanimous vote of a quorum of the voting members of the Council will suffice.

(iv) Voting members of the Council who disagree with the majority on any issue to be submitted to the Secretary may submit a statement of their reasons for dissent to the Secretary.

(v)(A) Unless closed in accordance with paragraph (b)(4)(vi) of this sec-

tion, each regular meeting and each emergency meeting will be open to the public.

(B) Subject to the procedures established by the Council under § 601.23(e)(4), and the guidelines prescribed by the Secretary under Part 603 relating to confidentiality, the administrative record (including minutes required under paragraph (b)(3) of this section) of each meeting, and records or other documents which were made available to or prepared for or by the Council, committee, or panel incident to the meeting, will be available for public inspection and copying at a single location in the offices of the Council.

(vi) Each Council, scientific and statistical committee, and advisory panel:

(A) Will close any meeting, or portion thereof, that concerns matters or information that bears a national security classification; and

(B) May close any meeting, or portion thereof, that concerns matters or information that pertains to national security, employment matters, advisory panel and statistical committee appointments, contractor selection, or briefings on litigation in which the Council is interested.

(vii) If any meeting or portion is closed, the Council, committee, or panel concerned will publish notice of the closure in local newspapers in the major fishing ports within its region (and in other major, affected fishing ports), including the time and place of the meeting.

(5) *Frequency and duration.* The Councils shall meet in plenary session at least once every three months. Council advisory groups may meet as frequently as necessary, with the approval of the Council Chairman.

(6) *Location.* (i) Each Council shall conduct all meetings within its geographic area of concern. In the particular case of the North Pacific Council, "geographical area of concern" means within the State of Alaska. When two or more Councils have been designated by the Secretary to prepare a fishery management plan jointly, Councils so designated may meet jointly within their constituent States for the purpose of developing or amending such a plan.

(ii) The Council meeting place should have a capacity large enough to accommodate the anticipated public attendance and be easily accessible to those interested in attending.

(c) *Hearings*—(1) *General.* The Magnuson Act directs the Councils to hold public hearings, at appropriate times and in appropriate locations in the geographical area concerned, in order to provide the opportunity for all interested persons to be heard in the development of fishery management plans, amendments thereto, and with respect to the administration and implementation of the Magnuson Act. The Council may use its judgment regarding when and where such hearings should be held, keeping in mind that the term "geographical area of concern", for purposes of holding hearings, may include an area under the authority of another Council if the fish in the fishery concerned migrate into, or occur in, that area or if the matters being heard affect fishermen of that area; but not unless such other Council is first consulted regarding the conduct of such hearings within its area.

(2) *Conduct.* When it is determined that a hearing is appropriate, the Chairman of the Council will designate at least one voting member of the Council to officiate. Conduct of the hearing, beyond the stipulation that all points of view be given a chance for expression, is within the discretion of the hearing official under whatever instructions the Council may wish to provide.

(3) *Notice.* Hearings shall follow the same procedures for announcement as for Council and advisory group meetings. Advance notice also should be given in the local media where the hearing is to take place. Publicity should be sufficient in time, substance, and area coverage to assure that all interested parties are aware of the opportunity to make their views known.

(4) *Record.* An accurate record of the participants and their views shall be reported back to the Council and maintained as a part of the Council's official records.

(d) *Council operational structure*—(1) *General.* In addition to the Council staff and the advisory groups that are

provided for in the Act, an operational structure will be needed to develop basic inputs to the Fishery Management Plans and to assemble drafts for formal review by the Councils and their advisors. The operation structure(s) selected by a Council should:

(1) Address directly the responsibilities and functions listed in section 302(h) of the Act; and

(ii) Strike a reasonable balance among the following criteria.

(2) *Criteria for formation*—(i) *Focused responsibility*. The structure selected should assign clearly defined responsibilities in a clearly defined chain of command consistent with the formal structure provided in the Act.

(ii) *Administrative simplicity*. The structure selected should permit thorough and uncomplicated supervision by those with formal responsibility, including the Executive Director of the Council.

(iii) *Flexibility*. Within defined responsibilities, the structure should be able to bring to bear the necessary expertise on planning problems and to respond to shifts in Council priorities.

(iv) *Independence and relevance of science*. The scientific input to the development of plans should to the extent possible, be institutionally insulated from managerial biases and pressure from interested parties while remaining relevant to the problems of management.

(v) *Quality of scientific and technical information*. The structure should assure that the best scientific and technical information available will be applied in plan development.

(vi) *Minimum cost*. Cost, both in dollars and in diversionary impact on ongoing programs should be minimized within the constraints of the other criteria.

[42 FR 34452, July 5, 1977, as amended at 48 FR 56590, Dec. 22, 1983]

§ 601.25 Council statement of organization, practices and procedures.

(a) *General*. (1) The Act requires that the details of how a Council operates shall be published by the Council and made available to the public. The required Statement of Organization, Practices and Procedures, as a mini-

mum, shall address the items listed in the format below.

(2) Publication will be in the FEDERAL REGISTER, and include an address where interested members of the public may write to request copies. Changes in operating practices and procedures shall be reflected in revisions to the statement, which shall likewise be published and made available to the public.

(b) *Format*. (1) Name of council.

(2) Location of offices.

(3) Legal authority.

(4) Purpose.

(5) Council composition.

(6) Officers and terms of office.

(7) Staff.

(i) Composition.

(ii) Functions.

(iii) Employment practices.

(8) Standing committees of council members.

(i) Name.

(ii) Composition.

(iii) Function.

(9) Meetings and hearings.

(i) Frequency.

(ii) Duration.

(iii) Location.

(iv) Agendas or orders of business.

(v) Minutes.

(vi) General rules of procedures.

(vii) Authority of the chair.

(10) Advisory panels.

(i) Name.

(ii) Composition.

(iii) Function.

(11) Organization of management plan development teams.

(i) Organization.

(ii) Practices and procedures.

(iii) Balance among criteria.

(A) Focused responsibility.

(B) Administrative simplicity.

(C) Flexibility.

(D) Independence and relevance of science.

(E) Quality of scientific and technical information.

(F) Minimum cost.

(12) Financial management system.

(i) Standards for and code of employment conduct in contract awards and administration.

(ii) Procurement procedures.

(iii) Property management.

(iv) Accounting and budgetary control procedures.

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Plans, 1982***

* 50 C.F.R. §602 (1982).

§ 602.1

[42 FR 34452, July 5, 1977]

PART 602—GUIDELINES FOR FISHERY MANAGEMENT PLANS

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APPENDIX A TO SUBPART B—EXPLANATORY MATERIAL

AUTHORITY: 16 U.S.C. 1801 *et seq.*

Subpart A—General

§ 602.1 Purpose and scope.

The Act requires that any fishery management plan or amendment prepared by either the Regional Fishery Management Councils or the Secretary of Commerce, and any regulations issued to implement a fishery management plan or amendment, shall be consistent with seven national standards, the other provisions of the Act, and any other applicable law. Part 602 implements those portions of the Act that pertain to the development, content, submission, amendment, review, and implementation of fishery management plans, and establishes guidelines to assist in achieving the required consistency.

[48 FR 7408, Feb. 18, 1983]

§ 602.2 Style guide.

(a) *Definitions.* The terms used in these guidelines have the meanings that are prescribed in section 3 of the Act. In addition, the following definitions apply:

The Act—the Magnuson Fishery Conservation and Management Act, as

Title 50—Wildlife and Fisheries

amended (16 U.S.C. 1801 *et seq.*), also known as the FCMA, or the Magnuson Act.

Council—Regional Fishery Management Council, as established by the Act.

Secretary—Secretary of Commerce.

(b) *Abbreviations.*

ABC—acceptable biological catch.

DAH—estimated domestic annual harvest.

DAP—estimated domestic annual processing.

EY—equilibrium yield.

FCZ—fishery conservation zone.

FMP—fishery management plan.

JVP—joint venture processing.

MSY—maximum sustainable yield.

OY—optimum yield.

PMP—preliminary fishery management plan.

TAC—total allowable catch.

TALFF—total allowable level of foreign fishing.

(c) *Word usage.* (1) *Must* is used to denote an obligation to act; it is used primarily when referring to requirements of the Act, the logical extension thereof, or of other applicable law.

(2) *Should* is used to indicate that an action or consideration is strongly recommended to fulfill the Secretary's interpretation of the Act, and is a factor reviewers will look for in evaluating an FMP.

(3) *May* is used in a permissive sense.

(4) *May not* is proscriptive; it has the same force as *must not*.

(5) *Will* is used descriptively.

(6) *Shall* is not used at all, except when quoting the statutory language of each standard. "Must" is used instead of "shall" to avoid confusion with the future tense.

(7) *Could* is used when giving examples, in a hypothetical, permissive sense.

(8) *Can* is used to mean "is able to," as distinguished from "may."

(9) *Examples* are given by way of illustration and further explanation. They are not inclusive lists; they do not limit options.

(10) *Analysis*, as a paragraph heading, signals more detailed guidance as to the type of discussion and examination an FMP should contain to demonstrate compliance with the standard in question.

(11) *Determine* is used when referring to OY.

(12) *Adjust* is used when establishing a deviation from MSY for biological reasons, such as in establishing ABC, TAC, or EY.

(13) *Modify* is used when the deviation from MSY is for the purpose of determining OY, in accord with relevant economic, social, or ecological factors.

(14) *Industry* includes recreational and commercial fishing and the harvesting, processing, and marketing sectors.

[48 FR 7408, Feb. 18, 1983]

Subpart B—National Standards

SOURCE: 48 FR 7408, Feb. 18, 1983, unless otherwise noted.

§ 602.10 General.

(a) *Purpose.* (1) This subpart establishes guidelines, based on the national standards, to assist in the development and review of FMPs, amendments, and regulations prepared by the Councils and the Secretary.

(2) In developing FMPs, the Councils have the initial authority to ascertain factual circumstances, to establish management objectives, and to propose management measures that will achieve the objectives. The Secretary will determine whether the proposed management objectives and measures are consistent with the national standards, other provisions of the Act, and other applicable law. The Secretary has an obligation under section 301(b) of the Act to inform the Councils of the Secretary's interpretation of the national standards so that they will have an understanding of the basis on which FMPs will be reviewed.

(3) The national standards are statutory principles that must be followed in any FMP. The guidelines summarize Secretarial interpretations that have been and will be, applied under these principles. The guidelines are intended as aids to decisionmaking; FMPs formulated according to the guidelines will have a better chance for expeditious Secretarial review, approval, and implementation. FMPs that are in substantial compliance

with the guidelines, the Act, and other applicable law must be approved.

(b) *Fishery management objectives.*

(1) Each FMP, whether prepared by a Council or by the Secretary, should identify what the FMP is designed to accomplish, i.e., the management objectives to be attained in regulating the fishery under consideration. In establishing objectives, Councils balance biological constraints with human needs, reconcile present and future costs and benefits, and integrate the diversity of public and private interests. If objectives are in conflict, priorities should be established among them.

(2) How objectives are defined is important to the management process. Objectives should address the problems of a particular fishery. The objectives should be clearly stated, practicably attainable, framed in terms of definable events and measurable benefits, and based upon a comprehensive rather than a fragmentary approach to the problems addressed. An FMP should make a clear distinction between objectives and the management measures chosen to achieve them. The objectives of each FMP provide the context within which the Secretary will judge the consistency of an FMP's conservation and management measures with the national standards.

§ 602.11 National Standard 1—Optimum Yield.

(a) *Standard 1.* Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery.

(b) *General.* The determination of OY is a decisional mechanism for resolving the Act's multiple purposes and policies, for implementing an FMP's objectives, and for balancing the various interests that comprise the national welfare. OY is based on MSY, or on MSY as it may be adjusted under paragraph (c)(4) of this section. The most important limitation on the specification of OY is that the choice of OY—and the conservation and management measures proposed to achieve it—must prevent overfishing.

(c) *MSY*. (1) *MSY*, a theoretical concept, is the largest average annual catch or yield that can be taken over a period of time from each stock under prevailing ecological and environmental conditions. It may be presented as a range of values. One *MSY* may be specified for a related group of species in a mixed-species fishery. Since *MSY* is a long-term average, it need not be specified annually.

(2) In an unexploited stock of fish, the natural mortality rate is balanced by growth and recruitment rates on average. Once fishing pressure is applied, the balance of mortality, growth, and recruitment is altered, and the average value of these rates and the average population size changes. As the population size changes, a new balance of rates is achieved. The interrelationship between these rates and population size provides the basis for specifying the *MSY* of a stock. Techniques for estimating *MSY* depend on the scientific information available. The *MSY* may be derived from average past catches, stock production models, yield per recruit or dynamic pool models, spawner/recruit relationships, total biomass estimates and estimates of natural mortality, biomass estimates from ecosystem models, or other valid methods.

(3) The determination of *OY* requires a specification of *MSY*. However, where sufficient scientific data as to the biological characteristics of the stock do not exist, or the period of exploitation or investigation has not been long enough for adequate understanding of stock dynamics, or where frequent large-scale fluctuations in stock size make this concept of limited value, the *OY* should be based not on a fabricated *MSY* but on the best scientific information available.

(4) *MSY* may be only the starting point in providing a realistic biological description of allowable fishery removals. *MSY* may need to be adjusted because of environmental factors, stock peculiarities, or other biological variables, prior to the determination of *OY*. Examples are *ABC*, *TAC*, and *EY*. Such adjustments are valid, provided that they are explained and justified.

(d) *Overfishing*. (1) *Overfishing* is a level of fishing mortality that jeopardizes the capacity of a stock(s) to recover to a level at which it can produce maximum biological yield or economic value on a long-term basis under prevailing biological and environmental conditions. An *FMP* must prevent overfishing, except in certain limited situations. For example, harvesting the major component of a mixed fishery at its optimum level may result in the overharvest of a minor (smaller or less valuable) stock component. In another case, solving a particular problem may necessitate pruning larger fish from the population. A Council may decide to permit this type of overharvest if the analysis (paragraph (e)(5) of this section) identifies the benefits from such overfishing, and if the Council's action will not cause any stock component to require protection under the Endangered Species Act.

(2) Significant downward trends in spawning stock sizes and in average annual recruitment over a period of several years may signal that overfishing is occurring. These downward trends usually are preceded or accompanied by increased variability in annual recruitment and by major shifts to younger fish and fewer year classes in the spawning stock. If fishing continues at a rate that perpetuates the downward trends, the spawning stock eventually may be incapable of significant reproduction and may be irreversibly damaged.

(3) Declines in stock size may occur independent of fishing pressure, caused by a combination of factors such as natural fluctuations in the stock itself and in the environment, and man-made changes in essential habitat. Significant adverse alterations in the environment increase the possibility that fishing effort will contribute to a stock collapse. Decisions about the allowable level of fishing mortality will vary according to the conditions of the fishery and the amount of risk associated with different harvest rates.

(4) Since changes in environment/habitat conditions can produce the appearance of overfishing (as can new fishing pressure on an underutilized stock), care should be taken to identi-

fy the cause of the downward trends. Whether the trends in spawning stock size and in average recruitment are caused by environmental changes or by fishing effort, the only direct control under the Act is to propose management measures to reduce fishing mortality. Unless the Council asserts that reduced fishing pressure would not alleviate the problem, the FMP must include measures to reduce fishing mortality. If environmental changes are the primary cause of the downward trends, Councils may recommend restoration of habitat and other ameliorative programs.

(5) Fishing can produce a variety of effects on local and stockwide abundance, availability, size, and composition. Some of these effects have been called "overfishing"—with or without qualifiers such as growth, localized, and pulse. These effects are not "overfishing" under standard 1; a Council may recommend conservation and management measures to prevent or permit these effects, depending on the objectives of a particular FMP.

(e) *Specification of OY.* (1) *OY and management objectives.* Ideally, the process of determining OY and the resulting specification integrate the various objectives of the FMP. Relative weighting of the elements of the OY determination will be influenced both by regional objectives and by national considerations. Rarely will a fishery be managed to meet a single objective. Objectives may conflict. Consequently, priority decisions should be made in developing objectives, the timing of their achievement, and the management measures to achieve them. (See section 602.10.)

(2) *Values in determining OY.* In determining the greatest benefit to the Nation, two values that should be weighed are food production and recreational opportunities (section 3(18)(A) of the Act). They should receive serious attention as measures of benefit when considering the economic, ecological, or social factors used in modifying MSY to obtain OY.

(i) "Food production" encompasses the goals of providing seafood to consumers at reasonable prices, maintaining an economically viable fishery, and

utilizing the capacity of U.S. fishery resources to meet nutritional needs.

(ii) "Recreational opportunities" includes recognition of the importance of the quality of the recreational fishing experience, and of the contribution of recreational fishing to the national, regional, and local economies and food supplies.

(3) *Factors relevant to OY.* The Act's definition of OY identifies three categories of factors to be used in modifying MSY to arrive at OY: economic, social, and ecological (section 3(18)(B)). Examples are given below. Not every factor will be relevant in every fishery; for instance, there may be no Indian treaty rights. For some fisheries, insufficient information may be available with respect to some factors to provide a basis for corresponding modifications to MSY.

(i) *Economic factors.* Examples are promotion of domestic fishing, development of unutilized or underutilized fisheries, satisfaction of consumer and recreational needs, and encouragement of domestic and export markets for U.S. harvested fish. Some other factors that may be considered are the value of industrial fisheries the level of capitalization, operating costs of vessels, alternate employment opportunities, and economies of coastal areas.

(ii) *Social factors.* Examples are enjoyment gained from recreational fishing, avoidance of gear conflicts and resulting disputes, preservation of a way of life for fishermen and their families, and dependence of local communities on a fishery. Among other factors that may be considered are the cultural place of subsistence fishing, obligations under Indian treaties, and worldwide nutritional needs.

(iii) *Ecological factors.* Examples are the vulnerability of incidental or unregulated species in a mixed-species fishery, predator-prey or competitive interactions, and dependence of marine mammals and birds or endangered species on a stock of fish. Equally important are environmental conditions that stress marine organisms, such as natural and man-made changes in wetlands or nursery grounds, and effects of pollutants on habitat and stocks.

(4) *Form of OY specification.* (i) The "amount of fish" that constitutes the OY need not be expressed in terms of numbers or weight of fish. The economic, social, or ecological modifications to MSY may be expressed by describing fish having common characteristics, the harvest of which provides the greatest overall benefit to the Nation. For instance, OY may be expressed as a formula that converts periodic stock assessments into quotas or guideline harvest levels for recreational, commercial, and other fishing. OY may be defined in terms of an annual harvest of fish or shellfish having a minimum weight, length, or other measurement. OY may also be expressed as an amount of fish taken only in certain areas, or in certain seasons, or with particular gear, or by a specified amount of fishing effort. In the case of a mixed-species fishery, the incidental-species OY may be a function of the directed catch, or absorbed into an OY for related species.

(ii) If a numerical OY is chosen, a range or average may be specified.

(iii) In a fishery where there is a significant discard component, the OY may either include or exclude discards.

(iv) The OY specification can be converted into an annual numerical estimate to establish the TALFF and to analyze impacts of the management regime. There should be a mechanism in a multiyear plan for periodic reassessment of the OY specification, so that it is responsive to changing circumstances in the fishery.

(5) *Analysis.* An FMP must contain an analysis of how its OY specification was determined (section 303(a)(3) of the Act). It should relate the explanation of overfishing in paragraph (d) of this section to conditions in the particular fishery, and explain how its choice of OY and conservation and management measures will prevent overfishing in that fishery. If overfishing is permitted under paragraph (d)(1) of this section, the analysis must contain a justification in terms of overall benefits and an assessment of the risk of the species reaching a "threatened" or "endangered" status. If the stock has been diminished below a desired level, the analysis should include a program for rebuilding the

stock. A Council must identify those economic, social, and ecological factors relevant to management of a particular fishery, then evaluate and weigh them to arrive at the modification (if any) of MSY. The choice of a particular OY must be carefully defined and documented to show that the OY selected will produce the greatest benefit to the Nation.

(f) *OY as a target.* (1) The specification of OY in an FMP is not automatically a quota or ceiling, although quotas may be derived from the OY where appropriate. OY is a target or goal; an FMP must contain conservation and management measures, and provisions for information collection, that are designed to achieve it. These measures should allow for practical and effective implementation and enforcement of the management regime, so that the harvest is allowed to reach but not to exceed OY by a substantial amount. The Secretary then has the obligation to implement and enforce the FMP so that OY is achieved. If management measures prove unenforceable—or too restrictive or not rigorous enough to realize OY—they should be modified; an alternative is to reexamine the adequacy of the OY specification.

(2) Exceeding OY does not necessarily constitute overfishing, although they might coincide. Even if no overfishing resulted, continual harvest at a level above a fixed-value OY would violate national standard 1 because OY was exceeded (not achieved) on a continuing basis.

(g) *OY and foreign fishing.* Section 201(d) of the Act provides that fishing by foreign nations is limited to that portion of the OY that will not be harvested by vessels of the United States. The achievement of OY under national standard 1 requires that foreign fishing vessels be given reasonable opportunity to harvest such "surplus." The exception is where an annual fishing level is certified under section 201(d)(2)(B). The annual fishing level amount is allocated to foreign fishing, as is the remainder of the "surplus" (OY minus DAH); if the determinations under section 201(d)(4) are made, however, allocation of all or part of

that remainder may be deferred until the next harvesting season.

(1) *DAH*. Councils must consider the capacity of, and the extent to which, U.S. vessels will harvest the OY on an annual basis. Estimating the amount that U.S. fishing vessels will actually harvest is required to determine the surplus.

(2) *Reserves*. Part of the OY may be held as a reserve to allow for uncertainties in estimates of stock size and of DAH. If an OY reserve is established, an adequate mechanism should be included in the FMP to permit timely release of the reserve to foreign fishermen, if necessary, so that full utilization of the OY may be achieved. An FMP may also provide for a direct transfer of a portion of DAH to TALFF.

(3) *DAP*. (i) Each FMP must identify the capacity of U.S. processors. It must also identify the amount of domestic annual processed fish (DAP), which is the sum of two estimates:

(A) The amount of U.S. harvest that domestic processors will process. This estimate may be based on historical performance and on surveys of the expressed intention of manufacturers to process, supported by evidence of contracts, plant expansion, or other relevant information; and

(B) The amount of fish that will be harvested but not processed (e.g., marketed as fresh whole fish, used for private consumption, or used for bait).

(ii) When DAH exceeds DAP, the surplus is available for JVP. JVP is a part of DAH.

§ 602.12 National Standard 2—Scientific Information.

(a) *Standard 2*. Conservation and management measures shall be based upon the best scientific information available.

(b) *FMP development*. The fact that scientific information concerning a fishery is incomplete does not prevent the preparation and implementation of an FMP (see related §§ 602.13(d)(2) and 602.17(b)).

(1) Scientific information includes, but is not limited to, information of a biological, ecological, economic, or social nature. Successful fishery management depends, in part, on the

timely availability, quality, and quantity of scientific information, as well as on the thorough analysis of this information, and the extent to which the information is applied. If there are conflicting facts or opinions relevant to a particular point, a Council may choose among them, but should justify the choice.

(2) FMPs must take into account the best scientific information available at the time of preparation. Between the initial drafting of an FMP and its submission for final review, new information often becomes available. This new information should be incorporated into the final FMP where practicable; but it is unnecessary to start the FMP process over again unless the information indicates that drastic changes have occurred in the fishery that might require revision of the management objectives or measures.

(c) *FMP implementation*. (1) An FMP must specify whatever information fishermen and processors will be required or requested to submit to the Secretary. Information about harvest within State boundaries, as well as in the FCZ, may be collected if it is needed for proper implementation of the FMP and cannot be obtained otherwise. The FMP should explain the practical utility of the information specified in monitoring the fishery, in facilitating inseason management decisions, and in judging the performance of the management regime; it should also consider the effort, cost, or social impact of obtaining it.

(2) An FMP should identify scientific information needed from other sources to improve understanding and management of the resource and the fishery.

(3) The information submitted by various data suppliers about the stock(s) throughout its range or about the fishery should be comparable and compatible, to the maximum extent possible.

(d) *FMP amendment*. FMPs should be amended on a timely basis, as new information indicates the necessity for change in objectives or management measures.

§ 602.13 National Standard 3—Management Units.

(a) *Standard 3.* To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

(b) *General.* The purpose of this standard is to induce a comprehensive approach to fishery management. The geographic scope of the fishery, for planning purposes, should cover the entire range of the stock(s) of fish, and not be overly constrained by political boundaries. Wherever practicable, an FMP should seek to manage interrelated stocks of fish.

(c) *Unity of management.* Cooperation and understanding among entities concerned with the fishery (e.g., Councils, States, Federal government, international commissions, foreign nations) are vital to effective management. Where management of a fishery involves multiple jurisdictions, coordination among the several entities should be sought in the development of an FMP. Where a range overlaps Council areas, one FMP to cover the entire range is preferred. The Secretary designates which Council or Councils will prepare the FMP, under section 304(f) of the Act.

(d) *Management unit.* The term "management unit" means a fishery or that portion of a fishery identified in an FMP as relevant to the FMP's management objectives.

(1) *Basis.* The choice of a management unit depends on the focus of the FMP's objectives, and may be organized around biological, geographic, economic, technical, social, or ecological perspectives. For example:

(i) *Biological*—could be based on a stock(s) throughout its range.

(ii) *Geographic*—could be an area.

(iii) *Economic*—could be based on a fishery supplying specific product forms.

(iv) *Technical*—could be based on a fishery utilizing a specific gear type or similar fishing practices.

(v) *Social*—could be based on fishermen as the unifying element, such as when the fishermen pursue different species in a regular pattern throughout the year.

(vi) *Ecological*—could be based on species that are associated in the ecosystem or are dependent on a particular habitat.

(2) *Conservation and management measures.* FMPs should include conservation and management measures for that part of the management unit within U.S. waters, although the Secretary can ordinarily implement them only within the FCZ. The measures need not be identical for each geographic area within the management unit, if the FMP justifies the differences. A management unit may contain, in addition to regulated species, stocks of fish for which there is not enough information available to specify MSY and OY or to establish management measures, so that data on these species may be collected under the FMP.

(e) *Analysis.* To document that an FMP is as comprehensive as practicable, it should include discussions of the following:

(1) The range and distribution of the stocks, as well as the patterns of fishing effort and harvest.

(2) Alternative management units and reasons for selecting a particular one. A less-than-comprehensive management unit may be justified if, for example, complementary management exists or is planned for a separate geographic area or for a distinct use of the stocks, or if the unmanaged portion of the resource is immaterial to proper management.

(3) Management activities and habitat programs of adjacent States and their effects on the FMP's objectives and management measures. Where State action is necessary to implement measures within State waters to achieve FMP objectives, the FMP should identify what State action is necessary, discuss the consequences of State inaction or contrary action, and make appropriate recommendations. The FMP should also discuss the impact that Federal regulations will have on State management activities.

(4) Management activities of other countries having an impact on the fishery, and how the FMP's management measures are designed to take into account these impacts. Interna-

tional boundaries may be dealt with in several ways. For example:

(i) By limiting the management unit's scope to that portion of the stock found in U.S. waters;

(ii) By estimating MSY for the entire stock and then basing the determination of OY for the U.S. fishery on the portion of the stock within U.S. waters; or

(iii) By referring to treaties or cooperative agreements.

§ 602.14 National Standard 4—Allocations.

(a) *Standard 4.* Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be: (A) Fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(b) *Discrimination among residents of different States.* An FMP may not differentiate among U.S. citizens, nationals, resident aliens, or corporations on the basis of their State of residence. An FMP may not incorporate or rely on a State statute or regulation that discriminates against residents of another State. Conservation and management measures that have different effects on persons in various geographic locations are permissible, if they satisfy the other guidelines under standard 4. Examples of these precepts are:

(1) An FMP that restricted fishing in the FCZ to those holding a permit from State X would violate standard 4 if State X issued permits only to its own citizens.

(2) An FMP that closed a spawning ground might disadvantage fishermen living in the State closest to it, because they would have to travel farther to an open area, but the closure could be justified under standard 4 as a conservation measure with no discriminatory intent.

(c) *Allocation of fishing privileges.* An FMP may contain management measures that allocate fishing privileges if such measures are necessary or

helpful in furthering legitimate objectives or in achieving the OY, and if the measures conform with paragraphs (c)(3) (i) through (iii) of this section.

(1) *Definition.* An "allocation" or "assignment" of fishing privileges is a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals. Any management measure (or lack of management) has incidental allocative effects, but only those measures that result in direct distributions of fishing privileges will be judged against the allocation requirements of standard 4. Adoption of an FMP that merely perpetuates existing fishing practices may result in an allocation, if those practices directly distribute the opportunity to participate in the fishery. Allocations of fishing privileges include, for example, per-vessel catch limits, quotas by vessel class and gear type, different quotas or fishing seasons for recreational and commercial fishermen, assignment of ocean areas to different gear users, and limitation of permits to a certain number of vessels or fishermen.

(2) *Analysis of allocations.* Each FMP should contain a description and analysis of the allocations existing in the fishery and of those made in the FMP. The effects of eliminating an existing allocation system should be examined. Allocation schemes considered but rejected by the Council should be included in the discussion. The analysis should relate the recommended allocations to the FMP's objectives and OY specification, and discuss the factors listed in paragraph (c)(3) of this section.

(3) *Factors in making allocations.* An allocation of fishing privileges must be fair and equitable, must be reasonably calculated to promote conservation, and must avoid excessive shares. These tests are explained in paragraphs (c)(3) (i) through (iii) of this section:

(i) *Fairness and equity.* (A) An allocation of fishing privileges should be rationally connected with the achievement of OY or with the furtherance of a legitimate FMP objective. Inherent in an allocation is the advantaging of

one group to the detriment of another. The motive for making a particular allocation should be justified in terms of the objectives of the FMP; otherwise, the disadvantaged user groups or individuals would suffer without cause. For instance, an FMP objective to preserve the economic status quo cannot be achieved by excluding a group of long-time participants in the fishery. On the other hand, there is a rational connection between an objective of harvesting shrimp at their maximum size and closing a nursery area to trawling.

(B) An allocation of fishing privileges may impose a hardship on one group if it is outweighed by the total benefits received by another group or groups. An allocation need not preserve the status quo in the fishery to qualify as "fair and equitable," if a restructuring of fishing privileges would maximize overall benefits. The Council should make an initial estimate of the relative benefits and hardships imposed by the allocation, and compare its consequences with those of alternative allocation schemes, including the status quo. Where relevant, judicial guidance and government policy concerning the rights of treaty Indians and aboriginal Americans must be considered in determining whether an allocation is fair and equitable.

(ii) *Promotion of conservation.* Numerous methods of allocating fishing privileges are considered "conservation and management measures" under section 303 of the Act. An allocation scheme may promote conservation by encouraging a rational, more easily managed use of the resource. Or it may promote conservation (in the sense of wise use) by optimizing the yield, in terms of size, value, market mix, price, or economic or social benefit of the product.

(iii) *Avoidance of excessive shares.* An allocation scheme must be designed to deter any person or other entity from acquiring an excessive share of fishing privileges, and to avoid creating conditions fostering inordinate control, by buyers or sellers, that would not otherwise exist.

(iv) *Other factors.* In designing an allocation scheme, a Council should consider other factors relevant to the

FMP's objectives. Examples are economic and social consequences of the scheme, food production, consumer interest, dependence on the fishery by present participants and coastal communities, efficiency of various types of gear used in the fishery, transferability of effort to and impact on other fisheries, opportunity for new participants to enter the fishery, and enhancement of opportunities for recreational fishing.

§ 602.15 National Standard 5—Efficiency.

(a) *Standard 5.* Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(b) *Efficiency in the utilization of resources—(1) General.* The term "utilization" encompasses harvesting, processing, and marketing, since management decisions affect all three sectors of the industry. The goal of promoting efficient utilization of fishery resources may conflict with other legitimate social or biological objectives of fishery management. In encouraging efficient utilization of fishery resources, this standard highlights one way that a fishery can contribute to the Nation's benefit with the least cost to society: given a set of objectives for the fishery, an FMP should contain management measures that result in as efficient a fishery as is practicable or desirable.

(2) *Efficiency.* In theory, an efficient fishery would harvest the OY with the minimum use of economic inputs such as labor, capital, interest, and fuel. Efficiency in terms of aggregate costs then becomes a conservation objective, where "conservation" constitutes wise use of all resources involved in the fishery, not just fish stocks.

(1) In an FMP, management measures may be proposed that allocate fish among different groups of individuals or establish a system of property rights. Alternative measures examined in searching for an efficient outcome will result in different distributions of gains and burdens among identifiable user groups. An FMP should demonstrate that management measures

aimed at efficiency do not simply redistribute gains and burdens without an increase in efficiency.

(ii) Management regimes that allow a fishery to operate at the lowest possible cost (e.g., fishing effort, administration, and enforcement) for a particular level of catch and initial stock size are considered efficient. Restrictive measures that unnecessarily raise any of those costs move the regime toward inefficiency. Unless the use of inefficient techniques or the creation of redundant fishing capacity contributes to the attainment of other social or biological objectives, an FMP may not contain management measures that impede the use of cost-effective techniques of harvesting, processing, or marketing, and should avoid creating strong incentives for excessive investment in private sector fishing capital and labor.

(c) *Limited access.* A "system for limiting access," which is an optional measure under section 303(b) of the Act, is a type of allocation of fishing privileges that may be used to promote economic efficiency or conservation. For example, limited access may be used to combat overfishing, overcrowding, or overcapitalization in a fishery to achieve OY. In an unutilized or underutilized fishery, it may be used to reduce the chance that these conditions will adversely affect the fishery in the future, or to provide adequate economic return to pioneers in a new fishery. In some cases, limited entry is a useful ingredient of a conservation scheme, because it facilitates application and enforcement of other management measures.

(1) *Definition.* Limited access (or limited entry) is a management technique that attempts to limit units of effort in a fishery, usually for the purpose of reducing economic waste, improving net economic return to the fishermen, or capturing economic rent for the benefit of the taxpayer or the consumer. Common forms of limited access are licensing of vessels, gear, or fishermen to reduce the number of units of effort, and dividing the total allowable catch into fishermen's quotas (a stock-certificate system). Two forms (i.e., Federal fees for licenses or permits in excess of adminis-

trative costs, and taxation) are not permitted under the Act.

(2) *Factors to consider.* The Act ties the use of limited access to the achievement of optimum yield. An FMP that proposes a limited access system must consider the factors listed in section 303(b)(6) of the Act and in § 602.14(c)(3) of these guidelines. In addition, it should consider the criteria for qualifying for a permit, the nature of the interest created, whether to make the permit transferable, and the Act's limitation on returning economic rent to the public under section 304(d)(1). The FMP should also discuss the costs of achieving an appropriate distribution of fishing privileges.

(d) *Analysis.* An FMP should discuss the extent to which overcapitalization, congestion, economic waste, and inefficient techniques in the fishery reduce the net benefits derived from the management unit and prevent the attainment and appropriate allocation of OY. It should also explain in terms of the FMP's objectives any restriction placed on the use of efficient techniques of harvesting, processing, or marketing. If during FMP development the Council considered imposing a limited-entry system, the FMP should analyze the Council's decision to recommend or reject limited access as a technique to achieve efficient utilization of the resources of the fishing industry.

(e) *Economic allocation.* This standard prohibits only those measures that distribute fishery resources among fishermen on the basis of economic factors alone, and that have economic allocation as their only purpose. Where conservation and management measures are recommended that would change the economic structure of the industry or the economic conditions under which the industry operates, the need for such measures must be justified in light of the biological, ecological, and social objectives of the FMP as well as the economic objectives.

§ 602.16 National Standard 6—Variations and Contingencies.

(a) *Standard 6.* Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

(b) *Conservation and management.* Each fishery exhibits unique uncertainties. The phrase "conservation and management" implies the wise use of fishery resources through a management regime that includes some protection against these uncertainties. The particular regime chosen must be flexible enough to allow timely responses to resource, industry, and other national and regional needs. Continual data acquisition and analysis will help the development of management measures to compensate for variations and to reduce the need for substantial buffers. Flexibility in the management regime and the regulatory process will aid in responding to contingencies.

(c) *Variations.* (1) In fishery management terms, variations arise from biological, social, and economic occurrences, as well as from fishing practices. Biological uncertainties and lack of knowledge can hamper attempts to estimate stock size and strength, stock location in time and space, environmental/habitat changes, and ecological interactions. Economic uncertainty may involve changes in foreign or domestic market conditions, changes in operating costs, drifts toward overcapitalization, and economic perturbations caused by changed fishing patterns. Changes in fishing practices, such as the introduction of new gear, rapid increases or decreases in harvest effort, new fishing strategies, and the effects of new management techniques, may also create uncertainties. Social changes could involve increases or decreases in recreational fishing, or the movement of people into or out of fishing activities due to such factors as age or educational opportunities.

(2) Every effort should be made to develop FMPs that discuss and take into account these vicissitudes. To the extent practicable, FMPs should provide a suitable buffer in favor of conservation. Allowances for uncertainties

should be factored into the various elements of an FMP. Examples are:

(i) *Reduce OY.* Lack of scientific knowledge about the condition of a stock(s) could be a reason to reduce OY.

(ii) *Establish a reserve.* Creation of a reserve may compensate for uncertainties in estimating domestic harvest, stock conditions, or environmental factors.

(iii) *Adjust management techniques.* In the absence of adequate data to predict the effects of a new regime, and to avoid creating unwanted variations, a Council could guard against producing drastic changes in fishing patterns, allocations, or practices.

(iv) *Highlight habitat conditions.* FMPs may address the impact of pollution and the effects of wetland and estuarine degradation on the stocks of fish; identify causes of pollution and habitat degradation and the authorities having jurisdiction to regulate or influence such activities; propose recommendations that the Secretary will convey to those authorities to alleviate such problems; and state the views of the Council on unresolved or anticipated issues.

(d) *Contingencies.* Unpredictable events—such as unexpected resource surges or failures, fishing effort greater than anticipated, disruptive gear conflicts, climatic conditions, or environmental catastrophes—are best handled by establishing a flexible management regime that contains a range of management options through which it is possible to act quickly without amending the FMP or even its regulations.

(1) The FMP should describe the management options and their consequences in the necessary detail to guide the Secretary in responding to changed circumstances, so that the Council preserves its role as policy-setter for the fishery. The description enables the public to understand what may happen under the flexible regime, and to comment on the options.

(2) FMPs should include criteria for the selection of management measures, directions for their application, and mechanisms for timely adjustment of management measures comprising the regime. For example, an

FMP could include criteria that allow the Secretary to open and close seasons, close fishing grounds, or make other adjustments in management measures.

(3) Amendment of a flexible FMP would be necessary when circumstances in the fishery change substantially, or when a Council adopts a different management philosophy and objectives.

§ 602.17 National Standard 7—Costs and Benefits.

(a) *Standard 7.* Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

(b) *Necessity of Federal management—(1) General.* The principle that not every fishery needs regulation is implicit in this standard. The Act does not require Councils to prepare FMPs for each and every fishery—only for those where regulation would serve some useful purpose and where the present or future benefits of regulation would justify the costs. For example, the need to collect data about a fishery is not, by itself, adequate justification for preparation of an FMP, since there are less costly ways to gather the data (see § 602.13(d)(2)). In some cases, the FMP preparation process itself, even if it does not culminate in a document approved by the Secretary, can be useful in supplying a basis for management by one or more coastal States.

(2) *Criteria.* In deciding whether a fishery needs management through regulations implementing an FMP, the following general factors should be considered, among others:

(i) The importance of the fishery to the Nation and to the regional economy.

(ii) The condition of the stock or stocks of fish and whether an FMP can improve or maintain that condition.

(iii) The extent to which the fishery could be or is already adequately managed by States, by State/Federal programs, by Federal regulations pursuant to FMPs or international commissions, or by industry self-regulation, consistent with the policies and standards of the Act.

(iv) The need to resolve competing interests and conflicts among user groups and whether an FMP can further that resolution.

(v) The economic condition of a fishery and whether an FMP can produce more efficient utilization.

(vi) The needs of a developing fishery, and whether an FMP can foster orderly growth.

(vii) The costs associated with an FMP, balanced against the benefits (see paragraph (d) of this section as a guide).

(c) *Alternative management measures.* Management measures should not impose unnecessary burdens on the economy, on individuals, on private or public organizations, or on Federal, State, or local governments. Factors such as fuel costs, enforcement costs, or the burdens of collecting data may well suggest a preferred alternative.

(d) *Analysis.* The supporting analyses for FMPs should demonstrate that the benefits of fishery regulation are real and substantial relative to the added research, administrative, and enforcement costs, as well as costs to the industry of compliance. In determining the benefits and costs of management measures, each management strategy considered and its impacts on different user groups in the fishery should be evaluated. This requirement need not produce an elaborate, formalistic cost/benefit analysis. Rather, an evaluation of effects and costs, especially of differences among workable alternatives including the status quo, is adequate. If quantitative estimates are not possible, qualitative estimates will suffice.

(1) *Burdens.* Management measures should be designed to give fishermen the greatest possible freedom of action in conducting business and pursuing recreational opportunities that are consistent with ensuring wise use of the resource and reducing conflict in the fishery. The type and level of burden placed on user groups by the regulations need to be identified. Such an examination should include, for example: capital outlays; operating and maintenance costs; reporting costs; administrative, enforcement, and information costs; and prices to consumers.

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Management measures may shift costs from one level of government to another, from one part of the private sector to another, or from the government to the private sector. Redistribution of costs through regulations is likely to generate controversy. A discussion of these and any other burdens placed on the public through FMP regulations should be a part of the FMP's supporting analyses.

(2) *Gains.* The relative distribution of gains may change as a result of instituting different sets of alternatives, as may the specific type of gain. The analysis of benefits should focus on the specific gains produced by each alternative set of management measures, including the status quo. The benefits to society that result from the alternative management measures should be identified, and the level of gain assessed.

c. Sedentary Species

**Fishery Conservation and Management Act of 1976
(Definitions)***

* Pub. L. 94-265 §3, 90 Stat. 334; (1976).

COLEENTERATA

Bamboo Coral—*Acanella* spp.;
 Black Coral—*Antipathes* spp.;
 Gold Coral—*Callogorgia* spp.;
 Precious Red Coral—*Corallium* spp.;
 Bamboo Coral—*Keratoisis* spp.; and
 Gold Coral—*Parazoanthus* spp.

CRUSTACEA

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

MOLLUSKS

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

SPONGES

Glove Sponge—*Hippiospongia canaliculata*;
 Sheepswool Sponge—*Hippiospongia lachne*;
 Grass Sponge—*Spongia graminea*; and
 Yellow Sponge—*Spongia barbera*.

Publication in
 Federal Register.

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

(A) immobile on or under the seabed, or

(B) unable to move except in constant physical contact with the seabed or subsoil,

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

(5) The term "Council" means any Regional Fishery Management Council established under section 302.

d. Anadromous Species

Sockeye Salmon Fishery Act of 1947*

* Pub. L. 80-255, 61 Stat. 511; 16 U.S.C. §776 (1976).

[CHAPTER 345]

AN ACT

To provide for the protection, preservation, and extension of the sockeye salmon fishery of the Fraser River system, and for other purposes.

July 29, 1947
[H. R. 3707]
[Public Law 454]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Sockeye Salmon Fishery Act of 1947".

Sockeye Salmon
Fishery Act of 1947.

SEC. 2. When used in this Act—

(a) Convention: The word "convention" means the convention between the United States of America and the Dominion of Canada for the protection, preservation, and extension of the sockeye salmon fishery of the Fraser River system, signed at Washington on the 26th day of May 1930.

"Convention."

(b) Commission: The word "Commission" means the International Pacific Salmon Fisheries Commission provided for by article II of the convention.

50 Stat. 1355.

"Commission."

50 Stat. 1356.

(c) Person: The word "person" includes individuals, partnerships, associations, and corporations.

"Person."

(d) Convention waters: The term "convention waters" means those waters described in article I of the convention.

"Convention wa-
ters."

50 Stat. 1355.

"Sockeye salmon."

(e) Sockeye salmon: The term "sockeye salmon" means that species of salmon known by the scientific name *Oncorhynchus nerka*.

(f) Vessel: The word "vessel" includes every type or description of water craft or other contrivance used, or capable of being used, as a means of transportation in water.

"Vessel."

(g) Fishing: The word "fishing" means the fishing for, catching, or taking, or the attempted fishing for, catching, or taking, of any sockeye salmon in convention waters.

"Fishing."

(h) Fishing gear: The term "fishing gear" means any net, trap, hook, or other device, appurtenance or equipment, of whatever kind or description, used or capable of being used, for the purpose of capturing fish or as an aid in capturing fish.

"Fishing gear."

SEC. 3. (a) It shall be unlawful for any person to engage in fishing for sockeye salmon in convention waters in violation of the convention or of this Act or of any regulation of the Commission.

Unlawful acts.

(b) It shall be unlawful for any person to ship, transport, purchase, sell, offer for sale, import, export, or have in possession any sockeye salmon taken in violation of the convention or of this Act or of any regulation of the Commission.

(c) It shall be unlawful for any person or vessel to use any port or harbor or other place subject to the jurisdiction of the United States for any purpose connected in any way with fishing in violation of the convention or of this Act or of any regulation made by the Commission.

(d) It shall be unlawful for any person or vessel to engage in fishing for sockeye salmon in convention waters without first having obtained such license or licenses as may be used by or required by the Commission, or to fail to produce such license, upon demand, for inspection by an authorized enforcement officer.

(e) It shall be unlawful for any person to fail to make, keep, submit, or furnish any record or report required of him by the Commission or to refuse to permit any officer authorized to enforce the convention, this Act, and the regulations of the Commission, or any authorized representative of the Commission, to inspect any such record or report at any reasonable time.

(f) It shall be unlawful for any person to molest, interfere with, tamper with, damage, or destroy any boat, net, equipment, stores, provisions, fish-cultural stations, rearing pond, weir, fishway, or any other structure, installation, experiment, property, or facility acquired, constructed, or maintained by the Commission.

(g) It shall be unlawful for any person or vessel to do any act prohibited or to fail to do any act required by the convention or by this Act or by any regulation of the Commission.

Failure to furnish records, etc., penalty.

SEC. 4. Any person who fails to make, keep, or furnish any catch return, statistical record, or any report that may be required by the Commission, or any person who furnishes a false return, record, or report, upon conviction shall be subject to such fine as may be imposed by the court not to exceed \$1,000, and shall in addition be prohibited from fishing for and from shipping, transporting, purchasing, selling, offering for sale, importing, exporting, or possessing sockeye salmon from the date of conviction until such time as any delinquent return, record, or report shall have been submitted or any false return, record, or report shall have been replaced by a duly certified correct and true return, record, or report to the satisfaction of the court. The penalties imposed by section 5 of this Act shall not be invoked for failure to comply with requirements respecting returns, records, and reports.

Violation of provisions, penalty.

SEC. 5. (a) Except as provided in section 4, any person violating any provision of the convention or of this Act or the regulation of the Commission upon conviction shall be fined not more than \$1,000 or be imprisoned not more than one year, or both, and the court may prohibit such person from fishing for, or from shipping, transporting, purchasing, selling, offering for sale, importing, exporting, or possessing sockeye salmon for such period of time as it may determine.

Forfeiture.

(b) The catch of fish of every vessel or of any fishing gear employed in any manner, or any fish caught, shipped, transported, purchased, sold, offered for sale, imported, exported, or possessed in violation of this Act or the regulations of the Commission shall be forfeited; and upon a second and subsequent violation the catch of fish shall be forfeited and every such vessel and any fishing gear and appurtenances involved in the violation may be forfeited.

Procedures applicable.

(c) All procedures of law relating to the seizure, judicial forfeiture, and condemnation of a vessel for violation of the customs laws and the disposition of such vessel or the proceeds from the sale thereof shall apply to seizures, forfeitures, and condemnations incurred, or alleged to have been incurred, under the provisions of this Act insofar as such provisions of law are applicable and not inconsistent with this Act.

Issuance of citation.

(d) In cases of minor violations of the provisions of the convention or of this Act or the regulations of the Commission, and in cases where immediate arrest of the person or seizure of fish, fishing gear, or of a vessel, together with its tackle, apparel, furniture, appurtenances, and cargo, would impose an unreasonable hardship, the person authorized to make such arrest or seizure or any court of competent jurisdiction may, in his or its discretion, issue a citation requiring such person to appear before the proper official of the court having jurisdiction thereof within a specified time, not exceeding fifteen days; or in the case of property, post such citation upon said property and require its delivery to such court within such specified time. Upon the issuance of such citation and the filing of a copy thereof with the clerk of the appropriate court the person so cited and the property so seized and posted shall thereupon be subject to the jurisdiction of the court to answer the order of the court in such cause. Any property so seized shall not be disposed of except pursuant to the order of such court or the provisions of subsection (e) of this section.

Bond, etc.

(e) When a warrant of arrest or other process in rem, including that specified in subsection (d) of this section, is issued in any cause of admiralty jurisdiction under this section, the marshal or other officer shall stay the execution of such process, or discharge any property seized if the process has been levied, on receiving from the claimant of

the property a bond or stipulation with sufficient sureties or approved corporate surety in such sum as the court shall order, conditioned to deliver the property seized, if condemned, without impairment in value (or, in the case of sockeye salmon, to pay its equivalent 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 the event of any breach of the conditions thereof as determined by the court.

SEC. 6. (a) The President of the United States shall designate a Federal agency which shall be responsible for the enforcement of the provisions of the convention and this Act and the regulations of the Commission, except to the extent otherwise provided for in the convention and this Act. It shall be the duty of the Federal agency so designated to take appropriate measures for enforcement at such times and to such extent as it may deem necessary to insure effective enforcement and for this purpose to cooperate with other Federal agencies, State officers, the Commission, and with the authorized officers of the Dominion of Canada.

(b) The Federal agency designated by the President for enforcement purposes may authorize officers and employees of the State of Washington to enforce the provisions of the convention and of this Act and the regulations of the Commission. When so authorized such officers may function as Federal law-enforcement officers for the purposes of this Act.

(c) Enforcement of the convention and this Act and the regulations of the Commission shall be subject to and in accordance with the provisions of article IX of the convention.

(d) Any duly authorized officer or employee of the Federal agency designated by the President for enforcement purposes under the provisions of subsection (a) of this section 6; any officer or employee of the State of Washington who is authorized by the Federal agency so designated by the President; any enforcement officer of the Fish and Wildlife Service of the Department of the Interior, any Coast Guard officer, any United States marshal or deputy United States marshal, any collector or deputy collector of customs, and any other person authorized to enforce the provisions of the convention, this Act, and the regulations of the Commission, shall have power, without warrant or other process, but subject to the provisions of the convention, to arrest any person committing in his presence or view a violation of the convention or of this Act or of the regulations of the Commission and to take such person immediately for examination before an officer or trial before a court of competent jurisdiction; and shall have power, without warrant or other process, to search any vessel within convention waters when he has reasonable cause to believe that such vessel is subject to seizure under the provisions of the convention or this Act, or the regulations of the Commission, and to search any place of business or any commercial vehicle when he has reasonable cause to believe that such place or vehicle contains fish taken, possessed, transported, purchased, or sold in violation of any of the provisions of the convention, this Act, or the regulations of the Commission. Any person authorized to enforce the provisions of the convention and of this Act and the regulations of the Commission shall have power to execute any warrant or process issued by an officer or court of competent jurisdiction for the enforcement of this Act, and shall have power with a search warrant to search any person, vessel, or place, at any time. The judges of the United States courts and the United States commissioners may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue warrants in all such cases. Subject to

Designation of enforcement agency.

Enforcement officers.

50 Stat. 1339.
Power to arrest without warrant, etc.

Power to execute warrant, etc.

Issuance of warrants.

Seizure.

the provisions of the convention, any person authorized to enforce the convention and this Act and the regulations of the Commission may seize, whenever and wherever lawfully found, all fish caught, shipped, transported, purchased, sold, offered for sale, imported, exported, or possessed contrary to the provisions of the convention or this Act or the regulations of the Commission and may seize any vessel, together with its tackle, apparel, furniture, appurtenances and cargo, and all fishing gear, used or employed contrary to the provisions of the convention or this Act or the regulations of the Commission, or which it reasonably appears has been used or employed contrary to the provisions of the convention or this Act or the regulations of the Commission.

Certification of regulations.

(e) Evidence of any regulation made by the Commission may be given in any court proceedings by the production of a copy of such regulation certified by the Secretary of the Commission to be a true copy and no proof of the signature of the Secretary on such certification shall be required.

Inspection of license.

(f) Any authorized representative of the Commission, or any person authorized to enforce this Act and the regulations of the Commission may inspect any licenses issued to persons or vessels engaging in fishing for sockeye salmon in convention waters and for this purpose may at any reasonable time board any vessel or enter upon any premises where such fishing is or may be conducted.

Assistance of Government agencies.

SEC. 7. (a) All agencies of the Federal Government are authorized, upon request by the Commission, to furnish facilities and personnel for the purpose of assisting the Commission in carrying out its duties of scientific investigation and improvement of the fishery, as specified in the convention.

Scientific investigations, etc.

(b) None of the prohibitions contained in this Act, or in the laws and regulations of the States, 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.

Appropriations authorized.

SEC. 8. There is authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums, from time to time, as may be necessary to enable the Commission and agencies of the Federal Government to carry out the provisions of the convention and of this Act, including purchase, operation, maintenance, and repair of aircraft, motor vehicles (including passenger-carrying vehicles), boats, research vessels, and other necessary facilities; and printing.

Separability of provisions.

SEC. 9. If any provision of this Act is held invalid for any cause, such invalidity shall not affect the other provisions hereof.

Effective date.

SEC. 10. This Act shall be effective thirty days from the date of its approval.

Approved July 29, 1947.

Anadromous Fish Conservation Act of 1965*

* Pub. L. 89-304, 79 Stat. 1125; 6 U.S.C. §757 a-f (1976).

Public Law 89-304

AN ACT

October 30, 1965

[H. R. 23]

To authorize the Secretary of the Interior to initiate with the several States a cooperative program for the conservation, development, and enhancement of the Nation's anadromous fish, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That (a) for the purpose of conserving, developing, and enhancing within the several States the anadromous fishery resources of the Nation that are subject to depletion from water resources developments and other causes, or with respect to which the United States has made conservation commitments by international agreements, and for the purpose of conserving, developing, and enhancing the fish in the Great Lakes that ascend streams to spawn, the Secretary of the Interior is authorized to enter into cooperative agreements with one or more States, acting jointly or severally, that are concerned with the development, conservation, and enhancement of such fish, and, whenever he deems it appropriate, with other non-Federal interests. Such agreements shall describe (1) the actions to be taken by the Secretary and the cooperating parties, (2) the benefits that are expected to be derived by the States and other non-Federal interests, (3) the estimated cost of these actions, (4) the share of such costs to be borne by the Federal Government and by the States and other non-Federal interests: *Provided*, That the Federal share, including the operation and maintenance costs of any facilities constructed by the Secretary pursuant to this Act, which he annually determines to be a proper Federal cost, shall not exceed 50 per centum of such costs exclusive of the value of any Federal land involved: *Provided further*, That the non-Federal share may be in the form of real or personal property, the value of which will be determined by the Secretary, as well as money, (5) the term of the agreement, (6) the terms and conditions for disposing of any real or personal property acquired by the Secretary during or at the end of the term of the agreement, and (7) such other terms and conditions as he deems desirable.

Anadromous and Great Lakes fisheries. Conservation.

Cooperative agreement provisions with the States.

Federal and non-Federal costs.

(b) The Secretary may also enter into agreements with the States for the operation of any facilities and management and administration of any lands or interests therein acquired or facilities constructed pursuant to this Act.

Management functions.

SEC. 2. The Secretary, in accordance with any agreements entered into pursuant to section 1(a) of this Act, is authorized (1) to conduct such investigations, engineering and biological surveys, and research as may be desirable to carry out the program; (2) to carry out stream clearance activities; (3) to construct, install, maintain, and operate devices and structures for the improvement of feeding and spawning conditions, for the protection of fishery resources, and for facilitating the free migration of the fish; (4) to construct, operate, and maintain fish hatcheries wherever necessary to accomplish the purposes of this Act; (5) to conduct such studies and make such recommendations as the Secretary determines to be appropriate regarding the development and management of any stream or other body of water for the conservation and enhancement of anadromous fishery resources and the fish in the Great Lakes that ascend streams to spawn: *Provided*, That the reports on such studies and the recommendations of the Secretary shall be transmitted to the States, the Congress, and the Federal water resources construction agencies for their information: *Provided further*, That this Act shall not be construed as authorizing the formulation or construction of water resources projects, except

Investigations, surveys, studies, etc.

Reports to States, Congress and others.

that water resources projects which are determined by the Secretary to be needed solely for the conservation, protection, and enhancement of such fish may be planned and constructed by the Bureau of Reclamation in its currently authorized geographic area of responsibility, or by the Corps of Engineers, or by the Department of Agriculture, or by the States, with funds made available by the Secretary under this Act and subject to the cost-sharing and appropriations provisions of this Act; (6) to acquire lands or interests therein by purchase, lease, donation, or exchange for acquired lands or public lands under his jurisdiction which he finds suitable for disposition: *Provided*, That the lands or interests therein so exchanged shall involve approximately equal values, as determined by the Secretary: *Provided further*, That the Secretary may accept cash from, or pay cash to, the grantor in such an exchange in order to equalize the values of the properties exchanged; (7) to accept donations of funds and to use such funds to acquire or manage lands or interests therein; and (8) to administer such lands or interests therein for the purposes of this Act. Title to lands or interests therein acquired pursuant to this Act shall be in the United States.

SEC. 3. Activities authorized by this Act to be performed on lands administered by other Federal departments or agencies shall be carried out only with the prior approval of such departments or agencies.

Appropriations.

SEC. 4. (a) There is authorized to be appropriated for the period ending on June 30, 1970, not to exceed \$25,000,000 to carry out the purposes of this Act.

(b) Not more than \$1,000,000 of the funds appropriated under this section in any one fiscal year shall be obligated in any one State.

SEC. 5. This Act shall not be construed to affect, modify, or apply to the same area as the provisions of the Act of May 11, 1938 (52 Stat. 345), as amended (16 U.S.C. 755-757).

Recommendations to HEW.

60 Stat. 1081.

SEC. 6. The Secretary of the Interior shall, on the basis of studies carried out pursuant to this Act and section 5 of the Fish and Wildlife Coordination Act (48 Stat. 402), as amended (16 U.S.C. 665), make recommendations to the Secretary of Health, Education, and Welfare concerning the elimination or reduction of polluting substances detrimental to fish and wildlife in interstate or navigable waters or the tributaries thereof. Such recommendations and any enforcement measures initiated pursuant thereto by the Secretary of Health, Education, and Welfare shall be designed to enhance the quality of such waters, and shall take into consideration all other legitimate uses of such waters.

Approved October 30, 1965.

**1976 Amendments to the Anadromous Fish
Conservation Act of 1965***

* Pub. L. 91-249, 84 Stat. 214; 16 U.S.C. §757 a and d (1976).

Public Law 91-249

AN ACT

May 14, 1970
[H. R. 1049]

To amend the Anadromous Fish Conservation Act of October 30, 1965, relating to the conservation and enhancement of the Nation's anadromous fishing resources, to encourage certain joint research and development projects, and for other purposes.

Anadromous
Fish Conservation
Act, amendment.
79 Stat. 1125.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the first proviso contained in the second sentence of subsection (a) of the first section of the Act of October 30, 1965 (16 U.S.C. 757a(a)), is amended by inserting “, except as provided in subsection (c) of this section,” immediately before “the Federal share”.

Federal and
non-Federal
costs.

(b) The first section of such Act of October 30, 1965 (16 U.S.C. 757a), is further amended by adding at the end thereof the following new subsection:

“(c) Whenever two or more States having a common interest in any basin jointly enter into a cooperative agreement with the Secretary under subsection (a) of this section to carry out a research and development program to conserve, develop, and enhance anadromous fishery resources of the Nation, or fish in the Great Lakes that ascend streams to spawn, the Federal share of the program costs shall be increased to a maximum of 60 per centum. Structures, devices, or other facilities, including fish hatcheries, constructed by such States under a cooperative agreement described in this subsection shall be operated and maintained without cost to the Federal Government. For the purpose of this subsection, the term ‘basin’ includes rivers and their tributaries, lakes, and other bodies of water or portions thereof.”

“Basin.”

Appropriation.

SEC. 2. Subsection (a) of section 4 of such Act of October 30, 1965 (16 U.S.C. 757d(a)), is amended by adding at the end thereof the following new sentences: “There is authorized to be appropriated to carry out this Act, not to exceed \$6,000,000 for the fiscal year ending June 30, 1971, not to exceed \$7,500,000 for the fiscal year ending June 30, 1972, not to exceed \$8,500,000 for the fiscal year ending June 30, 1973, and not to exceed \$10,000,000 for the fiscal year ending June 30, 1974. Sums appropriated under this subsection are authorized to remain available until expended.”

Citation of
act.

SEC. 3. Such Act of October 30, 1965 (16 U.S.C. 757a-757f), is amended by adding at the end thereof the following new section:

“SEC. 7. This Act may be cited as the ‘Anadromous Fish Conservation Act.’”

Approved May 14, 1970.

e. Highly Migratory Species

Tuna Convention Act of 1950*

* Pub. L. 81-764, 64 Stat. 777; 16 U.S.C. §951-61 (1976).

AN ACT

To give effect to the Convention for the Establishment of an International Commission for the Scientific Investigation of Tuna, signed at Mexico City January 25, 1949, by the United States of America and the United Mexican States, and the Convention for the Establishment of an Inter-American Tropical Tuna Commission, signed at Washington May 31, 1949, by the United States of America and the Republic of Costa Rica, and for other purposes.

September 7, 1950
 (S. 2633)
 [Public Law 764]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Tuna Conventions Act of 1950".

Tuna Conventions
 Act of 1950.

SEC. 2. As used in this Act, the term—

Definitions.

(a) "convention" includes (1) the Convention for the Establishment of an International Commission for the Scientific Investigation of Tuna, signed at Mexico City January 25, 1949, by the United States of America and the United Mexican States, (2) the Convention for the Establishment of an Inter-American Tropical Tuna Commission, signed at Washington May 31, 1949, by the United States of America and the Republic of Costa Rica, or both such conventions, as the context requires;

(b) "commission" includes (1) the International Commission for the Scientific Investigation of Tuna, (2) the Inter-American Tropical Tuna Commission provided for by the conventions referred to in subsection (a) of this section, or both such commissions, as the context requires;

(c) "United States Commissioners" means the members of the commissions referred to in subsection (b) of this section representing the United States of America and appointed pursuant to the terms of the pertinent convention and section 3 of this Act;

(d) "person" means every individual, partnership, corporation, and association subject to the jurisdiction of the United States; and

(e) "enforcement agency" means such agency or agencies of the Federal Government as may be designated by the President to enforce the provisions of this Act and of the conventions and of regulations adopted pursuant to the conventions or this Act.

SEC. 3. The United States shall be represented on the two commissions by a total of not more than four United States Commissioners, who shall be appointed by the President, serve as such during his pleasure, and receive no compensation for their services as such Commissioners. Of such Commissioners—

U. S. representation
 on commissions.

(a) not more than one shall be a person residing elsewhere than in a State whose vessels maintain a substantial fishery in the areas of the conventions;

(b) at least one of the Commissioners who are such legal residents shall be a person chosen from the public at large, and who is not a salaried employee of a State or of the Federal Government; and

(c) at least one shall be an officer of the United States Fish and Wildlife Service.

Advisory committee.

Sec. 4. The United States Commissioners shall (a) appoint an advisory committee which shall be composed of not less than five nor more than fifteen persons who shall be selected from the various groups participating in the fisheries included under the conventions, and (b) shall fix the terms of office of the members of such committee, who shall receive no compensation for their services as such members. The advisory committee shall be invited to attend all nonexecutive meetings of the United States sections and shall be given full opportunity to examine and to be heard on all proposed programs of investigation, reports, recommendations, and regulations of the commissions. The advisory committee may attend all meetings of the international commissions to which they are invited by such commissions.

Attendance at non-executive meetings, etc.

Individual service.

Sec. 5. Service of an individual as a member of the commissions representing the United States appointed pursuant to section 3, or as a member of the advisory committee appointed pursuant to section 4, shall not be considered as service or employment bringing such individual within the provisions of sections 281, 283, and 284 of title 18 of the United States Code, of section 190 of the Revised Statutes (U. S. C., title 5, sec. 99), or of any other Federal law imposing restrictions, requirements, or penalties in relation to the employment of persons, the performance of services, or the payment or receipt of compensation in connection with any claim, proceeding, or matter involving the United States, other than claims, proceedings or matters in connection with the conventions or this Act.

62 Stat. 697,
18 U. S. C., Sup. III,
§§ 281, 283, 284.

Authority of Secretary of State.

Sec. 6. (a) The Secretary of State is authorized to approve or disapprove, on behalf of the United States Government, bylaws and rules, or amendments thereof, adopted by each commission and submitted for approval of the United States Government in accordance with the provisions of the conventions, and, with the concurrence of the head of the enforcement agency, to approve or disapprove the general annual programs of the commissions. The Secretary of State is further authorized to receive, on behalf of the United States Government, reports, requests, recommendations, and other communications of the commissions, and to take appropriate action thereon either directly or by reference to the appropriate authority.

Promulgation and applicability of regulations.

(b) Regulations recommended by each commission pursuant to the convention requiring the submission to the commission of records of operations by boat captains or other persons who participate in the fisheries covered by the convention, upon the concurrent approval of the Secretary of State and the head of the enforcement agency, shall be promulgated by the latter and upon publication in the Federal Register, shall be applicable to all vessels and persons subject to the jurisdiction of the United States.

False returns, etc.

Sec. 7. Any person who fails to make, keep, furnish, or refuses to permit inspection of any catch return, statistical record, or any report that may be required by the convention, or by regulations adopted pursuant to the convention or this Act, or any person who furnishes or issues a false return, record, or report, upon conviction, shall be subject to such fine as may be imposed by the court, not to exceed \$1,000, and in addition by appropriate proceedings in a court of competent jurisdiction such person may be enjoined from fishing for or possessing the kinds of fish covered by the convention, taken

in the waters of the Pacific Ocean, from the date of such conviction until such time as any delinquent return, record, or report shall have been submitted, or any false return, record, or report shall have been replaced by a duly certified correct and true return, record, or report to the satisfaction of the court.

SEC. 8. The head of the enforcement agency is authorized and directed to enforce all of the provisions of this Act and of the regulations issued pursuant thereto, and all of the provisions of the conventions, except to the extent otherwise provided for in this Act, or in the conventions.

Enforcement.

SEC. 9. (a) In order to provide coordination between the general annual programs of the commissions and programs of other agencies, relating to the exploration, development, and conservation of fishery resources, the Secretary of State may recommend to the United States Commissioners that they consider the relationship of the commissions' programs to those of such agencies and when necessary arrange, with the concurrence of such agencies, for mutual cooperation between the commissions and such agencies for carrying out their respective programs.

Coordination of programs.

(b) All agencies of the Federal Government are authorized on request of the commissions to cooperate in the conduct of scientific and other programs, or to furnish facilities and personnel for the purpose of assisting the commissions in the performance of their duties.

Cooperation of Federal agencies.

(c) The commissions are authorized and empowered to supply facilities and personnel to existing non-Federal agencies to expedite research work which in the judgment of the commissions is contributing or will contribute directly to the purposes of the conventions.

SEC. 10. (a) Any person authorized by the head of the enforcement agency to enforce the provisions of the conventions or of this Act or the regulations issued pursuant thereto shall have power, without warrant or other process, to arrest any person subject to the jurisdiction of the United States committing in his presence or view a violation of any of the provisions of the conventions, or of this Act, or of the regulations issued pursuant thereto, and to take such person immediately for examination before a justice or judge or any other official designated in section 3041, title 18, United States Code. Any person duly authorized on behalf of the United States to enforce the provisions of the conventions, or of this Act, or of the regulations issued pursuant thereto, shall have power to execute any warrant or other process issued by an officer or court of competent jurisdiction for the enforcement of the conventions, or of this Act, or of the regulations issued pursuant thereto.

Power to arrest.

62 Stat. 816,
18 U. S. C., Sup. III,
§ 3041.

(b) Any person authorized by the commissions shall have power, without warrant or other process, to inspect, at any reasonable hour, such catch returns, statistical records, or other reports as are required by the regulations to be made, kept, or furnished.

Power to inspect.

(c) The head of the enforcement agency may authorize officers and employees of any coastal State of the United States and employees of the commissions to enforce the provisions of the conventions or of this Act or the regulations issued pursuant thereto. When so authorized such officers and employees may function as Federal law-enforcement officers for the purposes of this Act.

SEC. 11. None of the prohibitions contained in this Act or in the laws and regulations of the States shall prevent the commissions from conducting or authorizing the conduct of fishing operations and biological experiments at any time for the purpose of scientific investigations as authorized by the conventions, or shall prevent the commissions from discharging any of its or their functions or duties prescribed by the conventions.

Scientific investigations, etc.

Appropriation au-
thorized.

SEC. 12. There is hereby authorized to be appropriated from time to time, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of each convention and of this Act, including—

(a) contributions to each commission for the United States share of any joint expenses of the commission and the expenses of the United States Commissioners and their staff, including personal services in the District of Columbia and elsewhere;

(b) travel expenses without regard to the Standardized Government Travel Regulations, as amended, the Travel Expense Act of 1949, or section 10 of the Act of March 3, 1893 (U. S. C., title 5, sec. 73b);

(c) printing and binding without regard to section 11 of the Act of March 1, 1919 (U. S. C., title 44, sec. 111), or section 3709 of the Revised Statutes (U. S. C., title 41, sec. 5);

(d) stenographic and other services by contract, if deemed necessary, without regard to section 3709 of the Revised Statutes (U. S. C., title 41, sec. 5); and

(e) purchase, hire, operation, maintenance, and repair of aircraft, motor vehicles (including passenger-carrying vehicles), boats and research vessels.

Separability.

SEC. 13. If any provision of this Act or the application of such provision to any circumstances 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.

Effective dates.

SEC. 14. This Act shall take effect with respect to each of the conventions upon the entry into force of that convention, unless such entry into force shall be prior to the date of approval of this Act in which case this Act shall take effect immediately.

Approved September 7, 1950.

63 Stat. 186,
2 U. S. C., Sup. III,
1843 note.
Amc. p. 89.
47 Stat. 1818.
42 Stat. 1275.
44 U. S. C., Sup. III,
1111.

1976 Act to Amend the Tuna Convention Act of 1950*

* Pub. L. 87-814, 76 Stat. 923; 16 U.S.C. §951, 955, 956, 957 and 959 (1976).

Public Law 87-814

AN ACT

October 15, 1962
[S. 2568]

To amend the Act of September 7, 1950, to extend the regulatory authority of the Federal and State agencies concerned under the terms of the Convention for the Establishment of an Inter-American Tropical Tuna Commission, signed at Washington May 31, 1949, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2 of the Act entitled "Tuna Conventions Act of 1950" (16 U.S.C. 951) is amended by repealing subsection (e) in its entirety and substituting therefor a new subsection (e) as follows:

Tuna Conventions Act of 1950, amendment, 64 Stat. 777.

"(e) 'United States' shall include all areas under the sovereignty of the United States, the Trust Territory of the Pacific Islands, and the Canal Zone."

"United States."

SEC. 2. Section 6 of the Act entitled "Tuna Conventions Act of 1950" (16 U.S.C. 953) is amended by striking out the phrase "head of the enforcement agency" where it appears once each in subsections (a) and (b) and inserting in lieu thereof in both places the term "Secretary of the Interior," and by adding a new subsection (c) immediately following subsection (b), as follows:

Regulations.

"(c) Regulations required to carry out recommendations of the commission made pursuant to paragraph 5 of article II of the Convention for the Establishment of an Inter-American Tropical Tuna Commission shall be promulgated as hereinafter provided by the Secretary of the Interior upon approval of such recommendations by the Secretary of State and the Secretary of the Interior. The Secretary of the Interior shall cause to be published in the Federal Register a general notice of proposed rulemaking and shall afford interested persons an opportunity to participate in the rulemaking through (1) submission of written data, views, or arguments, and (2) 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. 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 of the Interior shall prescribe, but in no event prior to an agreed date for the application by all countries whose vessels engage in fishing for species covered by the convention in the regulatory area on a meaningful scale, in terms of effect upon the success of the conservation program, of effective measures for the implementation of the commission's recommendations applicable to all vessels and persons subject to their respective jurisdictions. The Secretary of the Interior shall suspend at any time the application of any such regulations when, after consultation with the Secretary of State and the United States Commissioners, he determines that foreign fishing operations in the regulatory area are such as to constitute a serious threat to the achievement of the objectives of the commission's recommendations. The regulations thus promulgated may include the selection for regulation of one or more of the species covered by the convention; the division of the convention waters into areas; the establishment of one or more open or closed seasons as to each area; the limitation of 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; the limitation or prohibition of 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; the requiring of such clearance certificates for vessels as may be necessary to carry out the purposes of the convention and this Act; and such other measures incidental thereto as the Secretary of the Interior may

1 UST 230.

Publication in F. R.

Applicability.

deem necessary to implement the recommendations of the commission: *Provided*, That upon the promulgation of any such regulations the Secretary of the Interior shall promulgate additional regulations, with the concurrence of the Secretary of State, which shall become effective simultaneously with the application of the regulations hereinbefore referred to (1) to prohibit 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 regulatory 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 regulatory area; and (2) to prohibit entry into the United States, from any country, 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 regulatory area by vessels other than those of such country in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the commission. In the case of repeated and flagrant fishing operations in the regulatory area by the vessels of any country which seriously threaten the achievement of the objectives of the commission's recommendations, the Secretary of the Interior, with the concurrence of the Secretary of State, may, in his discretion, also prohibit the entry from such country of such other species of tuna, in any form, as may be under investigation by the commission and which were taken in the regulatory area. The aforesaid prohibitions shall continue until the Secretary of the Interior 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."

64 Stat. 778.

Sec. 3. Section 7 of the Act entitled "Tuna Conventions Act of 1950" (16 U.S.C. 956) is amended by deleting the section in its entirety and substituting in lieu thereof the following:

"Sec. 7. Any person authorized to carry out enforcement activities under this Act and any person authorized by the commissions shall have power without warrant or other process, to inspect, at any reasonable time, catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this Act to be made, kept, or furnished."

Violations.

Sec. 4. Section 8 of the Act entitled "Tuna Conventions Act of 1950" (16 U.S.C. 957) is amended by deleting the section in its entirety and substituting in lieu thereof the following:

Amn. p. 923.

"Sec. 8. (a) It shall be unlawful for any master or other person in charge of a fishing vessel of the United States to engage in fishing in violation of any regulation adopted pursuant to section 6(c) of this Act, or for any person knowingly to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish taken or retained in violation of such regulations.

"(b) It shall be unlawful for the master or any person in charge of any fishing vessel of the United States or any person on board such vessel to fail to make, keep, or furnish any catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this Act to be made, kept, or furnished; or to fail to stop upon being hailed by a duly authorized official of the United States; or to refuse to permit the duly authorized officials of the United States or authorized officials of the commissions to board such vessel or inspect its catch, equipment, books, documents, records, or other articles or question the persons on board in accordance with the provisions of this Act, or the convention, as the case may be.

"(c) It shall be unlawful for any person to import, in violation of any regulation adopted pursuant to section 6(c) of this Act, from any country, any fish in any form of those species subject to regulation pursuant to a recommendation of the commission, or any tuna 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 6(c) of this Act. In the case of any fish as described in this subsection offered for entry into the United States, the Secretary of the Interior shall require proof satisfactory to him that such fish is not ineligible for such entry under the terms of section 6(c) of this Act.

Anti, p. 923.

"(d) Any person violating any provision of subsection (a) of this section shall be fined not more than \$25,000, and for a subsequent violation of any provisions of said subsection (a) shall be fined not more than \$50,000.

Penalties.

"(e) Any person violating any provision of subsection (b) of this section shall be fined not more than \$1,000, and for a subsequent violation of any provision of subsection (b) shall be fined not more than \$5,000.

"(f) Any person violating any provision of subsection (c) of this section shall be fined not more than \$100,000.

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

"(h) 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 Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act."

Sec. 5. Section 10 of the Act entitled "Tuna Conventions Act of 1950" (16 U.S.C. 959) is amended by deleting the section in its entirety and substituting in lieu thereof the following:

64 Stat. 779.

"Sec. 10. (a) The judges of the United States district courts and United States commissioners may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this Act and the regulations issued pursuant thereto.

Enforcement.

"(b) Enforcement of the provisions of this Act and the regulations issued pursuant thereto shall be the joint responsibility of the United States Coast Guard, the United States Department of the Interior, and the United States Bureau of Customs. In addition, the Secretary of the Interior may designate officers and employees of the States of the United States, of the Commonwealth of Puerto Rico, and of American Samoa to carry out enforcement activities hereunder. When so designated, such officers and employees are authorized to function as Federal law enforcement agents for these purposes.

"(c) Any person authorized to carry out enforcement activities hereunder shall have the power to execute any warrant or process issued by any officer or court of competent jurisdiction for the enforcement of this Act.

"(d) Such person so authorized shall have the power—

"(1) with or without a warrant or other process, to arrest any persons subject to the jurisdiction of the United States at any place within the jurisdiction of the United States committing in his presence or view a violation of this Act or the regulations issued thereunder;

"(2) with or without a warrant or other process, to search any vessel subject to the jurisdiction of the United States, and, if as a result of such search he has reasonable cause to believe that such

vessel or any person on board is engaging in operations in violation of the provisions of this Act or the regulations issued thereunder, then to arrest such person.

"(e) Such person so authorized may seize, whenever and wherever lawfully found, all fish taken or retained in violation of the provisions of this Act or the regulations issued pursuant thereto. Any fish so seized may be disposed of pursuant to the order of a court of competent jurisdiction, pursuant to the provisions of subsection (f) of this section or, if perishable, in a manner prescribed by regulations of the Secretary of the Interior.

62 Stat. 974.

"(f) Notwithstanding the provisions of section 2464 of title 28 of the United States Code, 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 and the proceeds of such sale placed in the registry of the court pending judgment in the case."

SEC. 6. Nothing in this Act shall be construed to amend or repeal the provisions of section 4311 of the Revised Statutes, as amended (46 U.S.C. 251).

Approved October 15, 1962.

Fishermen's Protective Act of 1968*

* 22 U.S.C. §1971-76 (1976).



Public Law 90-482
90th Congress, S. 2269
August 12, 1968

An Act

To amend the Act of August 27, 1954, relative to the unlawful seizure of fishing vessels of the United States by foreign countries.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of August 27, 1954 (68 Stat. 883; 22 U.S.C. 1971-1976), is amended by adding at the end thereof a new section to read as follows:

Fishermen's
Protective Act
of 1967, amend-
ment.

"Sec. 7. (a) The Secretary, upon receipt of an application filed with him at any time after the effective date of this section by the owner of any vessel of the United States which is documented or certificated as a commercial fishing vessel, shall enter into an agreement with such owner subject to the provisions of this section and such other terms and conditions as the Secretary deems appropriate. Such agreement shall provide that, if said vessel is seized by a foreign country and detained under the conditions of section 2 of this Act, the Secretary shall guarantee—

22 USC 1972.

"(1) the owner of such vessel for all actual costs, except those covered by section 3 of this Act, incurred by the owner during the seizure and detention period and as a direct result thereof, as determined by the Secretary, resulting (A) from any damage to, or destruction of, such vessel, or its fishing gear or other equipment, (B) from the loss or confiscation of such vessel, gear, or equipment, or (C) from dockage fees or utilities;

22 USC 1973.

"(2) the owner of such vessel and its crew for the market value of fish caught before seizure of such vessel and confiscated or spoiled during the period of detention; and

"(3) the owner of such vessel and its crew for not to exceed 50 per centum of the gross income lost as a direct result of such seizure and detention, as determined by the Secretary of the Interior, based on the value of the average catch per day's fishing during the three most recent calendar years immediately preceding such seizure and detention of the vessel seized, or, if such experience is not available, then of all commercial fishing vessels of the United States engaged in the same fishery as that of the type and size of the seized vessel.

"(b) Payments made by the Secretary under paragraphs (2) and (3) of subsection (a) of this section shall be distributed by the Secretary in accordance with the usual practices and procedures of the particular segment of the United States commercial fishing industry to which the seized vessel belongs relative to the sale of fish caught and the distribution of the proceeds of such sale.

82 STAT. 729

82 STAT. 730

"(c) The Secretary shall from time to time establish by regulation fees which shall be paid by the owners of vessels entering into agreements under this section. Such fees shall be adequate (1) to recover the costs of administering this section, and (2) to cover a reasonable portion of any payments made by the Secretary under this section. The amount fixed by the Secretary shall be predicated upon at least 33½ per centum of the contribution by the Government. All fees collected by the Secretary shall be credited to a separate account established in the Treasury of the United States which shall remain available without fiscal year limitation to carry out the provisions of this section. All payments under this section shall be made first out of such fees so long as they are available, and thereafter out of funds which are hereby authorized to be appropriated to such account to carry out the provisions of this section.

Effective date.

Definitions.

"(d) All determinations made under this section shall be final. No payment under this section shall be made with respect to any losses covered by any policy of insurance or other provision of law.

"(e) The provisions of this section shall be effective for forty-eight consecutive months beginning one hundred and eighty days after the enactment of this section. The Secretary shall issue such regulations and take such other measures as he deems appropriate to implement the provisions of this section prior to such effective date.

"(f) For the purposes of this section—

"(1) the term 'Secretary' means the Secretary of the Interior.

"(2) the term 'owner' includes any charterer of a commercial fishing vessel."

SEC. 2. Section 3 of the Act of August 27, 1954 (68 Stat. 883; 22 U.S.C. 1973), is amended by inserting a comma after the word "fine" wherever it appears and the words "license fee, registration fee, or any other direct charge".

SEC. 3. Section 5 of the Act of August 27, 1954 (68 Stat. 883, 22 U.S.C. 1975), is amended to read as follows:

"SEC. 5. The Secretary of State shall take such action as he may deem appropriate to make and collect claims against a foreign country for amounts expended by the United States under the provisions of this Act (including payments made pursuant to section 7) because of the seizure of a vessel of the United States by such country. If such country fails or refuses to make payment in full within one hundred and twenty days after receiving notice of any such claim of the United States, the Secretary of State shall withhold, pending such payment, an amount equal to such unpaid claim from any funds programmed for the current fiscal year for assistance to the government of such country (as shown in materials concerning such fiscal year presented to the Congress in connection with its consideration of amendments to the Foreign Assistance Act of 1961). Amounts withheld under this section shall not constitute satisfaction of any such claim of the United States against such foreign country."

75 Stat. 424.
22 USC 2151
note.

Short title.

SEC. 4. The Act of August 27, 1954 (68 Stat. 883; 22 U.S.C. 1971-1976), as amended by this Act, may be cited as the "Fishermen's Protective Act of 1967".

Approved August 12, 1968.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 1566 (Comm. on Merchant Marine & Fisheries) and No. 625 accompanying H. R. 4451 (Comm. on Merchant Marine & Fisheries).

SENATE REPORTS: No. 815 (Comm. on Commerce) and No. 919 (Comm. on Foreign Relations).

CONGRESSIONAL RECORD:

Vol. 113 (1967): Sept. 18, H. R. 4451 considered in House.

Vol. 114 (1968): Apr. 3, considered and passed Senate.

July 31, considered and passed House, amended, in lieu of H. R. 4451.

Aug. 2, Senate concurred in House amendments.

Atlantic Tunas Convention Act of 1975*

* Pub. L. 94-70, 89 Stat. 385; 16 U.S.C. §971-971h (1976).

Public Law 94-70
94th Congress

An Act

To give effect to the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro May 14, 1966, by the United States of America and other countries, and for other purposes.

Aug. 5, 1975

[H.R. 5522]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Atlantic Tunas Convention Act of 1975".

Atlantic Tunas
Convention Act of
1975.

16 USC 971 note.

DEFINITIONS

SEC. 2. For the purpose of this Act—

16 USC 971.

(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.

20 UST 2887.

(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 "Council" means the Council established within the International Commission for the Conservation of Atlantic Tunas pursuant to article V of the Convention.

(4) The term "fisheries zone" means the entire zone established by the United States under the Act of October 14, 1966 (80 Stat. 908; 16 U.S.C. 1091-1094), or similar zones established by other parties to the Convention to the extent that such zones are recognized by the United States.

(5) 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.

(6) 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.

(7) The term "Panel" means any panel established by the Commission pursuant to article VI of the Convention.

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

(9) The term "Secretary" means the Secretary of Commerce.

(10) 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.

COMMISSIONERS

SEC. 3. (a) 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.

16 USC 971a.

Not more than one such Commissioner shall be a salaried employee of any State or political subdivision thereof, or the Federal Government. The Commissioners shall be entitled to select a Chairman and to adopt such rules of procedure as they find necessary.

(b) 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 4 of this Act, 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) 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.

ADVISORY COMMITTEE

16 USC 971b.

20 UST 2887.

SEC. 4. The United States Commissioners shall appoint an advisory committee which shall be composed of not less than five nor more than twenty individuals who shall be selected from the various groups concerned with the fisheries covered by the Convention. Each member of the advisory committee shall serve for a term of two years and be eligible for reappointment. Members of the advisory committee may attend all public meetings of the Commission, Council, or any Panel and any other meetings to which they are invited by the Commission, Council, or any Panel. The advisory committee shall be invited to attend all nonexecutive meetings of the United States Commissioners and at such meetings shall be given opportunity to examine and to be heard on all proposed programs of investigation, reports, recommendations, and regulations of the Commission. Members of the advisory committee shall receive no compensation for their services as such members. On approval by the United States Commissioners—

Transportation expenses.

(1) if not more than three members of the advisory committee are designated by the committee to attend any meeting of the Commission, Council, or advisory committee, or of any Panel, each of such members shall be paid for his actual transportation expenses and per diem incident to his attendance; and

(2) in any case in which more than three members are designated by the advisory committee to attend any such meeting, each such member to whom paragraph (1) does not apply may be paid for his actual transportation expenses and per diem incident to his attendance.

SECRETARY OF STATE TO ACT FOR THE UNITED STATES

16 USC 971c.

SEC. 5. (a) 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.

20 UST 2887.

(b) 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 fisheries 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.

Cooperative
enforcement
agreements.

ADMINISTRATION

SEC. 6. (a) The Secretary is authorized and directed to administer and enforce all of the provisions of the Convention, this Act, and regulations issued pursuant thereto, except to the extent otherwise provided for in this Act. 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 Act, 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,

16 USC 971d.

Regulations.

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 fisheries 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 Civil Service Commission.

Regulations.

(b) Enforcement activities at sea under the provisions of this Act 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.

20 UST 2887.

Regulations.

(c) (1) Upon favorable action by the Secretary of State under section 5(a) of this Act 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.

Publication in Federal Register.

(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.

Publication in Federal Register.

(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 Act;

(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; and

(I) impose such other requirements and provide for such other measures as the Secretary may deem necessary to implement any 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—

20 UST 2887.

Regulations.

(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.

(d) (1) Notwithstanding section 5(a) and subsection (c) of this section, the recommendations of the Commission concerning bluefin tuna (*Thunnus thynnus thynnus*) which were proposed at the third

regular meeting of the Council during the period beginning November 20 and ending November 26, 1974, shall apply with respect to persons and vessels subject to the jurisdiction of the United States immediately upon the taking effect of the regulations required to be promulgated under paragraph (2) of this subsection.

Regulations.

(2) Not later than the thirtieth day after the date of enactment of this Act, the Secretary shall promulgate such regulations as may be necessary and appropriate to carry out the purposes of paragraph (1) of this subsection, including, after consultation with the Secretary of the department in which the Coast Guard is operating, regulations providing procedures and methods of enforcement. Notwithstanding provisions of section 553 of title 5 of the United States Code, such regulations may be promulgated without general notice of proposed rulemaking, and such regulations may take effect on the date they are published in the Federal Register. Such regulations shall remain in force and effect with respect to persons and vessels subject to the jurisdiction of the United States until the last date on which the recommendations referred to in paragraph (1) can take effect under paragraph (3) of article VIII of the Convention, and if such recommendations do take effect under the Convention with respect to the United States on or before such last date, such regulations shall remain in force and effect, subject to the provisions of the Convention and this Act, for so long as such recommendations are so in effect.

Publication in
Federal Register.

20 UST 2887.

VIOLATIONS; FINES AND FORFEITURES; APPLICATION OF RELATED LAWS

16 USC 971e.

SEC. 7. (a) 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 6 of this Act; 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 6 of this Act, without regard to the citizenship of the person or vessel which took the fish.

(b) 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 Act to be made, kept, or furnished by such master or person.

(c) 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 Act 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 Act, or the Convention, as the case may be, or to obstruct such officials in the execution of such duties.

(d) It shall be unlawful for any person to import, in violation of any regulation adopted pursuant to section 6(c) or (d) of this Act, 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 6 (c) or (d) of this Act. 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 6 (c) or (d) of this Act.

(e) (1) Any person who—

(A) violates any provision of subsection (a) of this section shall be assessed a civil penalty of not more than \$25,000, and for any subsequent violation of such subsection (a) shall be assessed a civil penalty of not more than \$50,000;

(B) violates any provision of subsection (b) or (c) of this section shall be assessed a civil penalty of not more than \$1,000, and for any subsequent violation of such subsection (b) or (c) shall be assessed a civil penalty of not more than \$5,000; or

(C) violates any provision of subsection (d) of this section shall be assessed a civil penalty of not more than \$100,000.

(2) The Secretary is responsible for the assessment of the civil penalties provided for in paragraph (1). The Secretary may remit or mitigate any civil penalty assessed by him under this subsection for good cause shown.

(3) No penalty shall be assessed under this subsection unless the person accused of committing any violation is given notice and opportunity for a hearing with respect to such violation.

Notice and hearing.

(4) Upon any failure of any person to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action.

Civil action.

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

Forfeiture.

(g) 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 Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act.

ENFORCEMENT

Sec. 8. (a) Any person authorized in accordance with the provisions of this Act to enforce the provisions of this Act and the regulations issued thereunder may—

16 USC 971f.

(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 Act 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 Act 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 Act 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) To the extent authorized under the convention or by agreements between the United States and any contracting party concluded pursuant to section 5(b) of this Act for international enforcement, the duly authorized officials of such party shall have the authority to carry out the enforcement activities specified in section 8(a) of this Act 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 section 8(a) of this Act 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) Notwithstanding the provisions of section 2464 of title 28, United States Code, 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.

COOPERATION: COMMISSION'S FUNCTIONS NOT RESTRAINED BY THIS ACT OR STATE LAWS

16 USC 971g.

Sec. 9. (a) 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.

20 UST 2887.

(b) 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.

20 UST 2887.

(c) None of the prohibitions deriving from this Act, 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) (1) Except as provided in paragraph (2) of this subsection, nothing in this Act 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 Act 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 Act, 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 Act, 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 Act 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) To insure that the purposes of subsection (d) are carried out, the Secretary shall undertake a continuing review of the laws and regulations of all States to which subsection (d) applies or may apply and the extent to which such laws and regulations are enforced.

Laws and
regulations,
review.

APPROPRIATIONS

Sec. 10. There are authorized to be appropriated out of any moneys in the Treasury not otherwise appropriated, for fiscal year 1976, the period beginning July 1, 1976, and ending September 30, 1976, and fiscal year 1977 such sums as may be necessary for carrying out the purposes and provisions of this Act, including—

16 USC 971h.

(1) necessary travel expenses of the 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, United States Code; and

(2) the United States share of the joint expenses of the Commission as provided in article X of the convention.

SEPARABILITY

16 USC 971 note.

SEC. 11. If any provision of this Act 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.

Approved August 5, 1975.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 94-295 (Comm. on Merchant Marine and Fisheries).

SENATE REPORT No. 94-269 (Comm. on Commerce).

CONGRESSIONAL RECORD, Vol. 121 (1975):

June 16, considered and passed House.

July 11, considered and passed Senate, amended.

July 22, House concurred in Senate amendments.

1980 Amendments to the Atlantic Tunas
Convention Act of 1975*

* Pub. L. 96-339, 94 Stat. 1069; 16 U.S.C. §971 et seq (1980).

PUBLIC LAW 96-339 [S. 2549]; September 4, 1980

**AUTHORIZATION, APPROPRIATIONS—ATLANTIC
TUNAS CONVENTION ACT OF 1975**

*For Legislative History of this and other Laws, see Table 1, Public
Laws and Legislative History, at end of final volume*

An Act to authorize appropriations for fiscal years 1981, 1982, and 1983 for the
Atlantic Tunas Convention Act of 1975, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the
United States of America in Congress assembled,*

**SECTION 1. AMENDMENTS TO ATLANTIC TUNAS CONVENTION ACT OF
1975.**

The Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 et seq.) is
amended as follows:

(1) Section 4 is amended—

(A) by redesignating paragraphs (1) and (2) as subpara-
graphs (A) and (B), respectively;

(B) by striking out "paragraph (1)" in subparagraph (B) (as
so redesignated) and inserting in lieu thereof "subparagraph
(A)"; and

(C) by amending the first and second sentences to read as
follows:

"There is established an advisory committee which shall be com-
posed of—

"(1) not less than five nor more than twenty individuals
appointed by the United States Commissioners who shall select
such individuals from the various groups concerned with the
fisheries covered by the Convention; and

"(2) the chairmen (or their designees) of the New England, Mid-
Atlantic, South Atlantic, Caribbean, and Gulf Fishery Manage-
ment Councils established under section 302(a) of the Fishery
Conservation and Management Act of 1976 (16 U.S.C. 1852(a)).

Each member of the advisory committee appointed under paragraph
(1) shall serve for a term of two years and shall be eligible for
reappointment."

(2) Section 10 is amended by striking out "and 1980" and
inserting in lieu thereof "1980, 1981, 1982, and 1983".

SEC. 2. OBSERVER PROGRAM REGARDING CERTAIN FOREIGN FISHING.

(a) DEFINITIONS.—As used in this section—

(1) The term "Act of 1976" means the Fishery Conservation
and Management Act of 1976 (16 U.S.C. 1801 et seq.).

(2) The term "billfish" means any species of marlin, spearfish,
sailfish or swordfish.

(3) The term "Secretary" means the Secretary of Commerce.

(b) OBSERVER PROGRAM.—The Secretary shall establish a program
under which a United States observer will be stationed aboard each
foreign fishing vessel while that vessel—

(1) is in waters that are within—

(A) the fishery conservation zone established under section
101 of the Act of 1976, and

Atlantic Tunas
Convention Act
of 1975,
appropriation
authorization.

Advisory
committee.
16 USC 971b.

Membership.

Term of office.

16 USC 971h.

16 USC 1827.

16 USC 1811.

20 UST 2887.

(B) the Convention area as defined in Article I of the International Convention for the Conservation of Atlantic Tunas; and

(2) is taking or attempting to take any species of fish if such taking or attempting to take may result in the incidental taking of billfish.

The Secretary may acquire observers for such program through contract with qualified private persons.

(c) FUNCTIONS OF OBSERVERS.—United States observers, while aboard foreign fishing vessels as required under subsection (b), shall carry out such scientific and other functions as the Secretary deems necessary or appropriate to carry out this section.

(d) FEES.—There is imposed for each year after 1980 on the owner or operator of each foreign fishing vessel that, in the judgment of the Secretary, will engage in fishing in waters described in subsection (b)(1) during that year which may result in the incidental taking of billfish a fee in an amount sufficient to cover all of the costs of providing an observer aboard that vessel under the program established under subsection (a). The fees imposed under this subsection for any year shall be paid to the Secretary before that year begins. All fees collected by the Secretary under this subsection shall be deposited in the Fund established by subsection (e).

Foreign Fishing Observer Fund, establishment.

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

(f) PROHIBITED ACTS.—(1) It is unlawful for any person who is the owner or operator of a foreign fishing vessel to which this section applies—

(A) to violate any regulation issued under subsection (g);
(B) to refuse to pay the fee imposed under subsection (d) after being requested to do so by the Secretary; or

(C) to refuse to permit an individual who is authorized to act as an observer under this section with respect to that vessel to board the vessel for purposes of carrying out observer functions.

16 USC 1858.

(2) Section 308 of the Act of 1976 (relating to civil penalties) applies to any act that is unlawful under paragraph (1), and for purposes of such application the commission of any such act shall be treated as an act the commission of which is unlawful under section 307 of the Act of 1976.

16 USC 1857.

(g) REGULATIONS.—The Secretary shall issue such regulations as are necessary or appropriate to carry out this section.

16 USC 971i.

SEC. 3. REPORTS REGARDING BLUEFIN TUNA.

Submittal to Congress.

The Secretary of Commerce shall prepare, for each biennial period commencing with the period covering calendar years 1981 and 1982, and submit to the Congress a report setting forth, with respect to such biennial period—

(1) 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;

20 UST 2887.

(2) the status of bluefin tuna stocks within such Convention area and the trends in their population level; and

(3) related information resulting from the implementation of the observer program under section 2 of this Act.

The report required under this section shall be submitted to the Congress within sixty days after the close of the biennial period covered by the report. There are authorized to be appropriated such sums as may be necessary to carry out this section.

Appropriation
authorization.

Approved September 4, 1980.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 96-1017 accompanying H.R. 6310 (Comm. on Merchant Marine and Fisheries).

SENATE REPORT No. 96-708 (Comm. on Commerce, Science, and Transportation).
CONGRESSIONAL RECORD, Vol. 126 (1980):

May 20, considered and passed Senate.

June 3, H.R. 6310 considered and passed House; passage vacated and S. 2549, amended, passed in lieu.

July 28, Senate concurred in House amendments with amendments.

Aug. 22, House concurred in Senate amendments.

2. Marine Mammals

Marine Mammal Protection Act of 1972*

* Pub. L. 92-522, 86 Stat. 1027; 16 U.S.C. §1361-1407 (1976).

Public Law 92-522

AN ACT

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

October 21, 1972
(H. R. 10420)

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

Marine Mammal
Protection Act of
1972.

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TITLE II—MARINE MAMMAL COMMISSION

- Sec. 201. Establishment of Commission.
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Sec. 205. Coordination with other Federal agencies.
Sec. 206. Administration of Commission.
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FINDINGS AND DECLARATION OF POLICY

SEC. 2. The Congress finds that—

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

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

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

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

(5) marine mammals and marine mammal products either—
(A) move in interstate commerce, or

(B) affect the balance of marine ecosystems in a manner which is important to other animals and animal products which move in interstate commerce, and that the protection and conservation of marine mammals is therefore necessary to insure the continuing availability of those products which move in interstate commerce; and

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

DEFINITIONS

Sec. 3. For the purposes of this Act—

(1) The term “depletion” or “depleted” means any case in which the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under title II of this Act, determines that the number of individuals within a species or population stock—

(A) has declined to a significant degree over a period of years;

(B) has otherwise declined and that if such decline continues, or is likely to resume, such species would be subject to the provisions of the Endangered Species Conservation Act of 1969; or

(C) is below the optimum carrying capacity for the species or stock within its environment.

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

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

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

(5) The term “marine mammal” means any mammal which (A) is morphologically adapted to the marine environment (including sea otters and members of the orders Sirenia, Pinnipedia and Cetacea), or (B) primarily inhabits the marine environment (such as the polar bear); and, for the purposes of this Act, includes any part of any such marine mammal, including its raw, dressed, or dyed fur or skin.

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

80 Stat. 926;
83 Stat. 283.
16 USC 668aa
note.

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

(8) The term "optimum carrying capacity" means the ability of a given habitat to support the optimum sustainable population of a species or population stock in a healthy state without diminishing the ability of the habitat to continue that function.

(9) The term "optimum sustainable population" means, with respect to any population stock, the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the optimum carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.

(10) The term "person" includes (A) any private person or entity, and (B) any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

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

(12) The term "Secretary" means—

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

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

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

(14) The term "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, the possessions of the United States, and the Trust Territory of the Pacific Islands.

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

(A) the territorial sea of the United States, and

(B) the fisheries zone established pursuant to the Act of October 14, 1966 (80 Stat. 908; 16 U.S.C. 1091-1094).

EFFECTIVE DATE

SEC. 4. The provisions of this Act shall take effect upon the expiration of the sixty-day period following the date of its enactment.

TITLE I—CONSERVATION AND PROTECTION OF MARINE MAMMALS

MORATORIUM AND EXCEPTIONS

SEC. 101. (a) There shall be a moratorium on the taking and importation of marine mammals and marine mammal products, commencing on the effective date of this Act, during which time no permit may be issued for the taking of any marine mammal and no marine mammal or marine mammal product may be imported into the United States except in the following cases:

(1) Permits may be issued by the Secretary for taking and importation for purposes of scientific research and for public display if—

(A) the taking proposed in the application for any such permit, or

(B) the importation proposed to be made, is first reviewed by the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under title II of this Act. The Commission and Committee shall recommend any proposed taking or importation which is consistent with the purposes and policies of section 2 of this Act. The Secretary shall, if he grants approval for importation, issue to the importer concerned a certificate to that effect which shall be in such form as the Secretary of the Treasury prescribes and such importation may be made upon presentation of the certificate to the customs officer concerned.

Commercial
fishing opera-
tions.

(2) During the twenty-four calendar months initially following the date of the enactment of this Act, the taking of marine mammals incidental to the course of commercial fishing operations shall be permitted, and shall not be subject to the provisions of sections 103 and 104 of this title: *Provided*, That such taking conforms to such conditions and regulations as the Secretary is authorized and directed to impose pursuant to section 111 hereof to insure that those techniques and equipment are used which will produce the least practicable hazard to marine mammals in such commercial fishing operations. Subsequent to such twenty-four months, marine mammals may be taken incidentally in the course of commercial fishing operations and permits may be issued thereof pursuant to section 104 of this title, subject to regulations prescribed by the Secretary in accordance with section 103 hereof. In any event it shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate. The Secretary shall request the Committee on Scientific Advisors on Marine Mammals to prepare for public dissemination detailed estimates of the numbers of mammals killed or seriously injured under existing commercial fishing technology and under the technology which shall be required subsequent to such twenty-four-month period. The Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards. The Secretary shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States.

Incidental
killing or injury,
restriction.

Waiver.

(3) (A) The Secretary, on the basis of the best scientific evidence available and in consultation with the Marine Mammal Commission, is authorized and directed, from time to time, having due regard to the distribution, abundance, breeding habits, and times and lines of migratory movements of such marine mammals, to determine when, to what extent, if at all, and by what means, it is compatible with this Act to waive the requirements of this section so as to allow taking, or importing of any marine mammal, or any marine mammal product, and to adopt suitable regulations, issue permits, and make determinations in accordance with sections 102, 103, 104, and 111 of this title permitting and governing such taking and importing, in accordance with such determinations: *Provided, however*, That the Secretary, in making such determinations, must be assured that the taking of such marine

Regulations;
permit require-
ment.

mammal is in accord with sound principles of resource protection and conservation as provided in the purposes and policies of this Act: *Provided further, however*, That no marine mammal or no marine mammal product may be imported into the United States unless the Secretary certifies that the program for taking marine mammals in the country of origin is consistent with the provisions and policies of this Act. Products of nations not so certified may not be imported into the United States for any purpose, including processing for exportation.

(B) Except for scientific research purposes as provided for in paragraph (1) of this subsection, during the moratorium no permit may be issued for the taking of any marine mammal which is classified as belonging to an endangered species pursuant to the Endangered Species Conservation Act of 1969 or has been designated by the Secretary as depleted, and no importation may be made of any such mammal.

Endangered species.

80 Stat. 926;
83 Stat. 283.
16 USC 668aa
note.

Alaskan natives, exemptions.

(b) The provisions of this Act shall not apply with respect to the taking of any marine mammal by any Indian, Aleut, or Eskimo who dwells on the coast of the North Pacific Ocean or the Arctic Ocean if such taking—

(1) is for subsistence purposes by Alaskan natives who reside in Alaska, or

(2) is done for purposes of creating and selling authentic native articles of handicrafts and clothing: *Provided*, That only authentic native articles of handicrafts and clothing may be sold in interstate commerce: *And provided further*, That any edible portion of marine mammals may be sold in native villages and towns in Alaska or for native consumption. For the purposes of this subsection, the term "authentic native articles of handicrafts and clothing" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to weaving, carving, stitching, sewing, lacing, beading, drawing, and painting; and

"Authentic native articles of handicrafts and clothing."

(3) in each case, is not accomplished in a wasteful manner.

Notwithstanding the preceding provisions of this subsection, when, under this Act, the Secretary determines any species or stock of marine mammal subject to taking by Indians, Aleuts, or Eskimos to be depleted, he may prescribe regulations upon the taking of such marine mammals by any Indian, Aleut, or Eskimo described in this subsection. Such regulations may be established with reference to species or stocks, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the purposes of this Act. Such regulations shall be prescribed after notice and hearing required by section 103 of this title and shall be removed as soon as the Secretary determines that the need for their imposition has disappeared.

Depleted species or stocks, regulations.

(c) In order to minimize undue economic hardship to persons subject to this Act, other than those engaged in commercial fishing operations referred to in subsection (a) (2) of this section, the Secretary, upon any such person filing an application with him and upon filing such information as the Secretary may require showing, to his satisfaction, such hardship, may exempt such person or class of persons from provisions of this Act for no more than one year from the date of the enactment of this Act, as he determines to be appropriate.

PROHIBITIONS

SEC. 102. (a) Except as provided in sections 101, 103, 104, 111, and 113 of this title, it is unlawful—

(1) for any person subject to the jurisdiction of the United States or any vessel or other conveyance subject to the jurisdiction of the United States to take any marine mammal on the high seas;

(2) except as expressly provided for by an international treaty, convention, or agreement to which the United States is a party and which was entered into before the effective date of this title or by any statute implementing any such treaty, convention, or agreement—

(A) for any person or vessel or other conveyance to take any marine mammal in waters or on lands under the jurisdiction of the United States; or

(B) for any person to use any port, harbor, or other place under the jurisdiction of the United States for any purpose in any way connected with the taking or importation of marine mammals or marine mammal products; and

(3) for any person, with respect to any marine mammal taken in violation of this title—

(A) to possess any such mammal; or

(B) to transport, sell, or offer for sale any such mammal or any marine mammal product made from any such mammal; and

(4) for any person to use, in a commercial fishery, any means or methods of fishing in contravention of any regulations or limitations, issued by the Secretary for that fishery to achieve the purposes of this Act.

(b) Except pursuant to a permit for scientific research issued under section 104(c) of this title, it is unlawful to import into the United States any marine mammal if such mammal was—

(1) pregnant at the time of taking;

(2) nursing at the time of taking, or less than eight months old, whichever occurs later;

(3) taken from a species or population stock which the Secretary has, by regulation published in the Federal Register, designated as a depleted species or stock or which has been listed as endangered under the Endangered Species Conservation Act of 1969; or

(4) taken in a manner deemed inhumane by the Secretary.

(c) It is unlawful to import into the United States any of the following:

(1) Any marine mammal which was—

(A) taken in violation of this title; or

(B) taken in another country in violation of the law of that country.

(2) Any marine mammal product if—

(A) the importation into the United States of the marine mammal from which such product is made is unlawful under paragraph (1) of this subsection; or

(B) the sale in commerce of such product in the country of origin of the product is illegal;

(3) Any fish, whether fresh, frozen, or otherwise prepared, if such fish was caught in a manner which the Secretary has proscribed for persons subject to the jurisdiction of the United States, whether or not any marine mammals were in fact taken incident to the catching of the fish.

(d) Subsections (b) and (c) of this section shall not apply—

(1) in the case of marine mammals or marine mammal prod-

80 Stat. 926;
83 Stat. 283.
16 USC 688 see
note.

ucts, as the case may be, to which subsection (b) (3) of this section applies, to such items imported into the United States before the date on which the Secretary publishes notice in the Federal Register of his proposed rulemaking with respect to the designation of the species or stock concerned as depleted or endangered; or

(2) in the case of marine mammals or marine mammal products to which subsection (c) (1) (B) or (c) (2) (B) of this section applies, to articles imported into the United States before the effective date of the foreign law making the taking or sale, as the case may be, of such marine mammals or marine mammal products unlawful.

(e) This Act shall not apply with respect to any marine mammal taken before the effective date of this Act, or to any marine mammal product consisting of, or composed in whole or in part of, any marine mammal taken before such date.

REGULATIONS ON TAKING OF MARINE MAMMALS

SEC. 103. (a) The Secretary, on the basis of the best scientific evidence available and in consultation with the Marine Mammal Commission, shall prescribe such regulations with respect to the taking and importing of animals from each species of marine mammal (including regulations on the taking and importing of individuals within population stocks) as he deems necessary and appropriate to insure that such taking will not be to the disadvantage of those species and population stocks and will be consistent with the purposes and policies set forth in section 2 of this Act.

(b) In prescribing such regulations, the Secretary shall give full consideration to all factors which may affect the extent to which such animals may be taken or imported, including but not limited to the effect of such regulations on—

(1) existing and future levels of marine mammal species and population stocks;

(2) existing international treaty and agreement obligations of the United States;

(3) the marine ecosystem and related environmental considerations;

(4) the conservation, development, and utilization of fishery resources; and

(5) the economic and technological feasibility of implementation.

(c) The regulations prescribed under subsection (a) of this section for any species or population stock of marine mammal may include, but are not limited to, restrictions with respect to—

(1) the number of animals which may be taken or imported in any calendar year pursuant to permits issued under section 104 of this title;

(2) the age, size, or sex (or any combination of the foregoing) of animals which may be taken or imported, whether or not a quota prescribed under paragraph (1) of this subsection applies with respect to such animals;

(3) the season or other period of time within which animals may be taken or imported;

(4) the manner and locations in which animals may be taken or imported; and

(5) fishing techniques which have been found to cause undue fatalities to any species of marine mammal in a fishery.

(d) Regulations prescribed to carry out this section with respect to any species or stock of marine mammals must be made on the record after opportunity for an agency hearing on both the Secretary's deter-

Meretorium
waiver, hearing.

mination to waive the moratorium pursuant to section 101(a)(3)(A) of this title and on such regulations, except that, in addition to any other requirements imposed by law with respect to agency rulemaking, the Secretary shall publish and make available to the public either before or concurrent with the publication of notice in the Federal Register of his intention to prescribe regulations under this section—

(1) a statement of the estimated existing levels of the species and population stocks of the marine mammal concerned;

(2) a statement of the expected impact of the proposed regulations on the optimum sustainable population of such species or population stock;

(3) a statement describing the evidence before the Secretary upon which he proposes to base such regulations; and

(4) any studies made by or for the Secretary or any recommendations made by or for the Secretary or the Marine Mammal Commission which relate to the establishment of such regulations.

(e) Any regulation prescribed pursuant to this section shall be periodically reviewed, and may be modified from time to time in such manner as the Secretary deems consistent with and necessary to carry out the purposes of this Act.

(f) Within six months after the effective date of this Act and every twelve months thereafter, the Secretary shall report to the public through publication in the Federal Register and to the Congress on the current status of all marine mammal species and population stocks subject to the provisions of this Act. His report shall describe those actions taken and those measures believed necessary, including where appropriate, the issuance of permits pursuant to this title to assure the well-being of such marine mammals.

PERMITS

SEC. 104. (a) The Secretary may issue permits which authorize the taking or importation of any marine mammal.

(b) Any permit issued under this section shall—

(1) be consistent with any applicable regulation established by the Secretary under section 103 of this title, and

(2) specify—

(A) the number and kind of animals which are authorized to be taken or imported,

(B) the location and manner (which manner must be determined by the Secretary to be humane) in which they may be taken, or from which they may be imported,

(C) the period during which the permit is valid, and

(D) any other terms or conditions which the Secretary deems appropriate.

In any case in which an application for a permit cites as a reason for the proposed taking the overpopulation of a particular species or population stock, the Secretary shall first consider whether or not it would be more desirable to transplant a number of animals (but not to exceed the number requested for taking in the application) of that species or stock to a location not then inhabited by such species or stock but previously inhabited by such species or stock.

(c) Any permit issued by the Secretary which authorizes the taking or importation of a marine mammal for purposes of display or scientific research shall specify, in addition to the conditions required by subsection (b) of this section, the methods of capture, supervision,

Regulatory statements and studies, publication.

Review.

Report to Congress; publication in Federal Register.

Importation for display or research.

care, and transportation which must be observed pursuant to and after such taking or importation. Any person authorized to take or import a marine mammal for purposes of display or scientific research shall furnish to the Secretary a report on all activities carried out by him pursuant to that authority.

Report.

(d) (1) The Secretary shall prescribe such procedures as are necessary to carry out this section, including the form and manner in which application for permits may be made.

Application procedures.

(2) The Secretary shall publish notice in the Federal Register of each application made for a permit under this section. Such notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data or views, with respect to the taking or importation proposed in such application.

Notice, publication in Federal Register.

(3) The applicant for any permit under this section must demonstrate to the Secretary that the taking or importation of any marine mammal under such permit will be consistent with the purposes of this Act and the applicable regulations established under section 103 of this title.

(4) If within thirty days after the date of publication of notice pursuant to paragraph (2) of this subsection with respect to any application for a permit any interested party or parties request a hearing in connection therewith, the Secretary may, within sixty days following such date of publication, afford to such party or parties an opportunity for such a hearing.

Hearing.

(5) As soon as practicable (but not later than thirty days) after the close of the hearing or, if no hearing is held, after the last day on which data, or views, may be submitted pursuant to paragraph (2) of this subsection, the Secretary shall (A) issue a permit containing such terms and conditions as he deems appropriate, or (B) shall deny issuance of a permit. Notice of the decision of the Secretary to issue or to deny any permit under this paragraph must be published in the Federal Register within ten days after the date of issuance or denial.

Publication in Federal Register.

(6) Any applicant for a permit, or any party opposed to such permit, may obtain judicial review of the terms and conditions of any permit issued by the Secretary under this section or of his refusal to issue such a permit. Such review, which shall be pursuant to chapter 7 of title 5, United States Code, may be initiated by filing a petition for review in the United States district court for the district wherein the applicant for a permit resides, or has his principal place of business, or in the United States District Court for the District of Columbia, within sixty days after the date on which such permit is issued or denied.

Judicial review.

80 Stat. 392.
5 USC 701.

(e) (1) The Secretary may modify, suspend, or revoke in whole or part any permit issued by him under this section—

Modification authority.

(A) in order to make any such permit consistent with any change made after the date of issuance of such permit with respect to any applicable regulation prescribed under section 103 of this title, or

(B) in any case in which a violation of the terms and conditions of the permit is found.

(2) Whenever the Secretary shall propose any modification, suspension, or revocation of a permit under this subsection, the permittee shall be afforded opportunity, after due notice, for a hearing by the Secretary with respect to such proposed modification, suspension, or revocation. Such proposed action by the Secretary shall not take effect until a decision is issued by him after such hearing. Any action taken by the Secretary after such a hearing is subject to judicial review on the same basis as is any action taken by him with respect to a permit

Hearing.

Judicial review.

application under paragraph (5) of subsection (d) of this section.

Publication in
Federal Register.

(3) Notice of the modification, suspension, or revocation of any permit by the Secretary shall be published in the Federal Register within ten days from the date of the Secretary's decision.

(f) Any permit issued under this section must be in the possession of the person to whom it is issued (or an agent of such person) during—

- (1) the time of the authorized or taking importation;
- (2) the period of any transit of such person or agent which is incident to such taking or importation; and
- (3) any other time while any marine mammal taken or imported under such permit is in the possession of such person or agent.

A duplicate copy of the issued permit must be physically attached to the container, package, enclosure, or other means of containment, in which the marine mammal is placed for purposes of storage, transit, supervision, or care.

Fee.

(g) The Secretary shall establish and charge a reasonable fee for permits issued under this section.

General
permits.

(h) Consistent with the regulations prescribed pursuant to section 103 of this title and to the requirements of section 101 of this title, the Secretary may issue general permits for the taking of such marine mammals, together with regulations to cover the use of such general permits.

PENALTIES

Notice; hearing.

SEC. 105. (a) Any person who violates any provision of this title or of any permit or regulation issued thereunder may be assessed a civil penalty by the Secretary of not more than \$10,000 for each such violation. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Each unlawful taking or importation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Secretary for good cause shown. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action.

(b) Any person who knowingly violates any provision of this title or of any permit or regulation issued thereunder shall, upon conviction, be fined not more than \$20,000 for each such violation, or imprisoned for not more than one year, or both.

VESSEL FINE, CARGO FORFEITURE, AND REWARDS

SEC. 106. (a) Any vessel or other conveyance subject to the jurisdiction of the United States that is employed in any manner in the unlawful taking of any marine mammal shall have its entire cargo or the monetary value thereof subject to seizure and forfeiture. All provisions of law relating to the seizure, judicial forfeiture, and condemnation of cargo for violation of the customs laws, the disposition of such cargo, and the proceeds from the sale thereof, and the remission or mitigation of any such forfeiture, shall apply with respect to the cargo of any vessel or other conveyance seized in connection with the unlawful taking of a marine mammal insofar as such provisions of law are applicable and not inconsistent with the provisions of this title.

(b) Any vessel subject to the jurisdiction of the United States that is employed in any manner in the unlawful taking of any marine mammal shall be liable for a civil penalty of not more than \$25,000. Such penalty shall be assessed by the district court of the United States having jurisdiction over the vessel. Clearance of a vessel against which a penalty has been assessed, from a port of the United States, may be withheld until such penalty is paid, or until a bond or otherwise satisfactory surety is posted. Such penalty shall constitute a maritime lien on such vessel which may be recovered by action in rem in the district court of the United States having jurisdiction over the vessel.

Penalty.

(c) Upon the recommendation of the Secretary, the Secretary of the Treasury is authorized to pay an amount equal to one-half of the fine incurred but not to exceed \$2,500 to any person who furnishes information which leads to a conviction for a violation of this title. Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

Information leading to conviction, reward.

ENFORCEMENT

SEC. 107. (a) Except as otherwise provided in this title, the Secretary shall enforce the provisions of this title. The Secretary may utilize, by agreement, the personnel, services, and facilities of any other Federal agency for purposes of enforcing this title.

Federal personnel, utilization.

(b) The Secretary may also designate officers and employees of any State or of any possession of the United States to enforce the provisions of this title. When so designated, such officers and employees are authorized to function as Federal law enforcement agents for these purposes, but they shall not be held and considered as employees of the United States for the purposes of any laws administered by the Civil Service Commission.

State officers and employees.

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

Warrants.

(d) Any person authorized by the Secretary to enforce this title may execute any warrant or process issued by any officer or court of competent jurisdiction for the enforcement of this title. Such person so authorized may, in addition to any other authority conferred by law—

Arrest and seizure, authority.

(1) with or without warrant or other process, arrest any person committing in his presence or view a violation of this title or the regulations issued thereunder;

(2) with a warrant or other process, or without a warrant if he has reasonable cause to believe that a vessel or other conveyance subject to the jurisdiction of the United States or any person on board is in violation of any provision of this title or the regulations issued thereunder, search such vessel or conveyance and arrest such person;

(3) seize the cargo of any vessel or other conveyance subject to the jurisdiction of the United States used or employed contrary to the provisions of this title or the regulations issued hereunder or which reasonably appears to have been so used or employed; and

(4) seize, whenever and wherever found, all marine mammals and marine mammal products taken or retained in violation of

this title or the regulations issued thereunder and shall dispose of them in accordance with regulations prescribed by the Secretary.

Seizure. (e) (1) Whenever any cargo or marine mammal or marine mammal product is seized pursuant to this section, the Secretary shall expedite any proceedings commenced under section 105 (a) or (b) of this title. All marine mammals or marine mammal products or other cargo so seized shall be held by any person authorized by the Secretary pending disposition of such proceedings. The owner or consignee of any such marine mammal or marine mammal product or other cargo so seized shall, as soon as practicable following such seizure, be notified of that fact in accordance with regulations established by the Secretary.

Notification.

Bond posting. (2) The Secretary may, with respect to any proceeding under section 105 (a) or (b) of this title, in lieu of holding any marine mammal or marine mammal product or other cargo, permit the person concerned to post bond or other surety satisfactory to the Secretary pending the disposition of such proceeding.

Forfeiture. (3) (A) Upon the assessment of a penalty pursuant to section 105 (a) of this title, all marine mammals and marine mammal products or other cargo seized in connection therewith may be proceeded against in any court of competent jurisdiction and forfeited to the Secretary for disposition by him in such manner as he deems appropriate.

(B) Upon conviction for violation of section 105(b) of this title, all marine mammals and marine mammal products seized in connection therewith shall be forfeited to the Secretary for disposition by him in such manner as he deems appropriate. Any other property or item so seized may, at the discretion of the court, be forfeited to the United States or otherwise disposed of.

(4) If with respect to any marine mammal or marine mammal product or other cargo so seized—

(A) a civil penalty is assessed under section 105(a) of this title and no judicial action is commenced to obtain the forfeiture of such mammal or product within thirty days after such assessment, such marine mammal or marine mammal product or other cargo shall be immediately returned to the owner or the consignee; or

(B) no conviction results from an alleged violation of section 105(b) of this title, such marine mammal or marine mammal product or other cargo shall immediately be returned to the owner or consignee if the Secretary does not, with thirty days after the final disposition of the case involving such alleged violation, commence proceedings for the assessment of a civil penalty under section 105(a) of this title.

INTERNATIONAL PROGRAM

Sec. 108. (a) The Secretary, through the Secretary of State, shall—

(1) initiate negotiations as soon as possible for the development of bilateral or multilateral agreements with other nations for the protection and conservation of all marine mammals covered by this Act;

(2) initiate negotiations as soon as possible with all foreign governments which are engaged in, or which have persons or companies engaged in, commercial fishing operations which are found by the Secretary to be unduly harmful to any species of marine mammal, for the purpose of entering into bilateral and multilat-

eral treaties with such countries to protect marine mammals. The Secretary of State shall prepare a draft agenda relating to this matter for discussion at appropriate international meetings and forums;

(3) encourage such other agreements to promote the purposes of this Act with other nations for the protection of specific ocean and land regions which are of special significance to the health and stability of marine mammals;

(4) initiate the amendment of any existing international treaty for the protection and conservation of any species of marine mammal to which the United States is a party in order to make such treaty consistent with the purposes and policies of this Act;

(5) seek the convening of an international ministerial meeting on marine mammals before July 1, 1973, for the purposes of (A) the negotiation of a binding international convention for the protection and conservation of all marine mammals, and (B) the implementation of paragraph (3) of this section; and

(6) provide to the Congress by not later than one year after the date of the enactment of this Act a full report on the results of his efforts under this section.

(b) (1) In addition to the foregoing, the Secretary shall—

(A) in consultation with the Marine Mammal Commission established by section 201 of this Act, undertake a study of the North Pacific fur seals to determine whether herds of such seals subject to the jurisdiction of the United States are presently at their optimum sustainable population and what population trends are evident; and

(B) in consultation with the Secretary of State, promptly undertake a comprehensive study of the provisions of this Act, as they relate to North Pacific fur seals, and the provisions of the North Pacific Fur Seal Convention signed on February 9, 1957, as extended (hereafter referred to in this subsection as the "Convention"), to determine what modifications, if any, should be made to the provisions of the Convention, or of this Act, or both, to make the Convention and this Act consistent with each other.

The Secretary shall complete the studies required under this paragraph not later than one year after the date of enactment of this Act and shall immediately provide copies thereof to Congress.

(2) If the Secretary finds—

(A) as a result of the study required under paragraph (1) (A) of this subsection, that the North Pacific fur seal herds are below their optimum sustainable population and are not trending upward toward such level, or have reached their optimum sustainable population but are commencing a downward trend, and believes the herds to be in danger of depletion; or

(B) as a result of the study required under paragraph (1) (B) of this subsection, that modifications of the Convention are desirable to make it and this Act consistent;

he shall, through the Secretary of State, immediately initiate negotiations to modify the Convention so as to (i) reduce or halt the taking of seals to the extent required to assure that such herds attain and remain at their optimum sustainable population, or (ii) make the Convention and this Act consistent; or both, as the case may be. If negotiations to so modify the Convention are unsuccessful, the Secretary shall, through the Secretary of State, take such steps as may be necessary to continue the existing Convention beyond its present termination date so as to continue to protect and conserve the North Pacific fur seals and to prevent a return to pelagic sealing.

International ministerial meeting on marine animals.

Report to Congress.

North Pacific fur seals study.

8 UST 2283;
15 UST 316;
20 UST 2992.

Study copies, transmittal to Congress.

Convention, modification negotiations.

8 UST 2283;
15 UST 316;
20 UST 2292.

Time extension.

FEDERAL COOPERATION WITH STATES

SEC. 109. (a) (1) Except as otherwise provided in this section, no State may adopt any law or regulation relating to the taking of marine mammals within its jurisdiction or attempt to enforce any State law or regulation relating to such taking.

Law enforcement.

(2) Any State may adopt and enforce any laws or regulations relating to the protection and taking, within its jurisdiction, of any species or population stock of marine mammals if the Secretary determines, after review thereof, that such laws and regulations will be consistent with (A) the regulations promulgated under section 103 of this title with respect to such species or population stock, and (B) such other provisions of this Act, and any rule or regulation promulgated pursuant to this title, which apply with respect to such species or population stock. If the Secretary determines that any such State laws and regulations are so consistent, the provisions of this Act, except this section and sections 101 (except to the extent that the Secretary waives the application of section 101 to permit such State laws and regulations to take effect) and 110 of this title, and title II of this Act, shall not apply with respect to the species or population stock concerned within the jurisdiction of the State.

State laws and regulations, review.

(3) Notwithstanding the preceding provisions of this subsection and the provisions of subsection (c) of this section, the Secretary shall continuously monitor and review the laws and regulations of any State which has assumed responsibility for marine mammals as provided for in paragraph (2) of this subsection. Whenever the Secretary finds that the laws and regulations of any such State are not in substantial compliance with either paragraph (1) or (2), or both, he shall resume responsibilities under this Act for the marine mammals concerned within the jurisdiction of that State, superseding such State laws and regulations to the extent which, after notice and opportunity for hearing, he deems necessary.

Mammals, taking for humane purposes.

(4) Nothing in this Act shall prevent a State or local government official or employee, in the course of his duties as an official or employee, from taking a marine mammal in a humane manner if such taking (A) is for the protection or welfare of such mammal or for the protection of the public health and welfare, and (B) includes steps designed to assure the return of such mammal to its natural habitat.

Grants to States.

(b) The Secretary is authorized to make grants to each State whose laws and regulations relating to protection and management of marine mammals which primarily inhabit waters or lands within the boundaries of that State are found to be consistent with the purposes and policies of this Act. The purpose of such grants shall be to assist such States in developing and implementing State programs for the protection and management of such marine mammals. Such grants shall not exceed 50 per centum of the costs of a particular program's development and implementation. To be eligible for such grants, State programs shall include planning and such specific activities, including, but not limited, to research, censusing, habitat acquisition and improvement, or law enforcement as the Secretary finds contribute to the purposes and policies of this Act. The Secretary may also, as a condition of any such grant, provide that State agencies report at regular intervals on the status of species and populations which are the subject of such grants.

Limitation.

Eligibility.

Report.

(c) The Secretary is authorized and directed to enter into cooperative arrangements with the appropriate officials of any State for the delegation to such State of the administration and enforcement of this title: *Provided*, That any such arrangement shall contain such provisions as the Secretary deems appropriate to insure that the purposes and policies of this Act will be carried out.

MARINE MAMMAL RESEARCH GRANTS

SEC. 110. (a) The Secretary is authorized to make grants, or to provide financial assistance in such other form as he deems appropriate, to any Federal or State agency, public or private institution, or other person for the purpose of assisting such agency, institution, or person to undertake research in subjects which are relevant to the protection and conservation of marine mammals.

(b) Any grant or other financial assistance provided by the Secretary pursuant to this section shall be subject to such terms and conditions as the Secretary deems necessary to protect the interests of the United States and shall be made after review by the Marine Mammal Commission.

(c) There are authorized to be appropriated for the fiscal year in which this section takes effect and for the next four fiscal years thereafter such sums as may be necessary to carry out this section, but the sums appropriated for any such year shall not exceed \$2,500,000, one-third of such sum to be available to the Secretary of the Interior and two-thirds of such sum to be made available to the Secretary of the department in which the National Oceanic and Atmospheric Administration is operating.

Appropriation.

Limitation.

COMMERCIAL FISHERIES GEAR DEVELOPMENT

SEC. 111. (a) The Secretary of the department in which the National Oceanic and Atmospheric Administration is operating (hereafter referred to in this section as the "Secretary") is hereby authorized and directed to immediately undertake a program of research and development for the purpose of devising improved fishing methods and gear so as to reduce to the maximum extent practicable the incidental taking of marine mammals in connection with commercial fishing. At the end of the full twenty-four calendar month period following the date of the enactment of this Act, the Secretary shall deliver his report in writing to the Congress with respect to the results of such research and development. For the purposes of this section, there is hereby authorized to be appropriated the sum of \$1,000,000 for the fiscal year ending June 30, 1973, and the same amount for the next fiscal year. Funds appropriated for this section shall remain available until expended.

Research and development.

Report to Congress.

Appropriation.

(b) The Secretary, after consultation with the Marine Mammal Commission, is authorized and directed to issue, as soon as practicable, such regulations, covering the twenty-four-month period referred to in section 101(a)(2) of this title, as he deems necessary or advisable, to reduce to the lowest practicable level the taking of marine mammals incidental to commercial fishing operations. Such regulations shall be adopted pursuant to section 553 of title 5, United States Code. In issuing such regulations, the Secretary shall take into account the results of any scientific research under subsection (a) of this section and, in each case, shall provide a reasonable time not exceeding four months for the persons affected to implement such regulations.

Regulations.

80 Stat. 383.

(c) Additionally, the Secretary and Secretary of State are directed to commence negotiations within the Inter-American Tropical Tuna Commission in order to effect essential compliance with the regulatory provisions of this Act so as to reduce to the maximum extent feasible the incidental taking of marine mammals by vessels involved in the tuna fishery. The Secretary and Secretary of State are further directed to request the Director of Investigations of the Inter-American Tropical Tuna Commission to make recommendations to all member nations

Inter-American Tropical Tuna Commission, compliance.

of the Commission as soon as is practicable as to the utilization of methods and gear devised under subsection (a) of this section.

Research and
observation.

(d) Furthermore, after timely notice and during the period of research provided in this section, duly authorized agents of the Secretary are hereby empowered to board and to accompany any commercial fishing vessel documented under the laws of the United States, there being space available, on a regular fishing trip for the purpose of conducting research or observing operations in regard to the development of improved fishing methods and gear as authorized by this section. Such research and observation shall be carried out in such manner as to minimize interference with fishing operations. The Secretary shall provide for the cost of quartering and maintaining such agents. No master, operator, or owner of such a vessel shall impair or in any way interfere with the research or observation being carried out by agents of the Secretary pursuant to this section.

REGULATIONS AND ADMINISTRATION

SEC. 112. (a) The Secretary, in consultation with any other Federal agency to the extent that such agency may be affected, shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this title.

Federal agen-
cies, cooperation.

(b) Each Federal agency is authorized and directed to cooperate with the Secretary, in such manner as may be mutually agreeable, in carrying out the purposes of this title.

Contract
authority.

(c) The Secretary may enter into such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the purposes of this title and on such terms as he deems appropriate with any Federal or State agency, public or private institution, or other person.

Annual review.

(d) The Secretary shall review annually the operation of each program in which the United States participates involving the taking of marine mammals on land. If at any time the Secretary finds that any such program cannot be administered on lands owned by the United States or in which the United States has an interest in a manner consistent with the purposes of policies of this Act, he shall suspend the operation of that program and shall forthwith submit to Congress his reasons for such suspension, together with recommendations for such legislation as he deems necessary and appropriate to resolve the problem.

Report to
Congress.

APPLICATION TO OTHER TREATIES AND CONVENTIONS; REPEAL

SEC. 113. (a) The provisions of this title shall be deemed to be in addition to and not in contravention of the provisions of any existing international treaty, convention, or agreement, or any statute implementing the same, which may otherwise apply to the taking of marine mammals. Upon a finding by the Secretary that the provisions of any international treaty, convention, or agreement, or any statute implementing the same has been made applicable to persons subject to the provisions of this title in order to effect essential compliance with the regulatory provisions of this Act so as to reduce to the lowest practicable level the taking of marine mammals incidental to commercial fishing operations, section 105 of this title may not apply to such persons.

Repeal.

(b) The proviso to the Act entitled "An Act to repeal certain laws providing for the protection of sea lions in Alaska water", approved June 16, 1984 (16 U.S.C. 659), is repealed.

48 Stat. 976.

AUTHORIZATION OF APPROPRIATIONS

SEC. 114. (a) There are authorized to be appropriated not to exceed \$2,000,000 for the fiscal year ending June 30, 1973, and the four next following fiscal years to enable the department in which the National Oceanic and Atmospheric Administration is operating to carry out such functions and responsibilities as it may have been given under this title.

(b) There are authorized to be appropriated not to exceed \$700,000 for the fiscal year ending June 30, 1973, and not to exceed \$525,000 for each of the next four fiscal years thereafter to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this title.

TITLE II—MARINE MAMMAL COMMISSION

ESTABLISHMENT OF COMMISSION

SEC. 201. (a) There is hereby established the Marine Mammal Commission (hereafter referred to in this title as the "Commission").

(b) (1) The Commission shall be composed of three members who shall be appointed by the President. The President shall make his selection from a list, submitted to him by the Chairman of the Council on Environmental Quality, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation, and the Chairman of the National Academy of Sciences, of individuals knowledgeable in the fields of marine ecology and resource management, and who are not in a position to profit from the taking of marine mammals. No member of the Commission may, during his period of service on the Commission, hold any other position as an officer or employee of the United States except as a retired officer or retired civilian employee of the United States.

(2) The term of office for each member shall be three years; except that of the members initially appointed to the Commission, the term of one member shall be for one year, the term of one member shall be for two years, and the term of one member shall be for three years. No member is eligible for reappointment; except that any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed (A) shall be appointed for the remainder of such term, and (B) is eligible for reappointment for one full term. A member may serve after the expiration of his term until his successor has taken office.

(c) The President shall designate a Chairman of the Commission (hereafter referred to in this title as the "Chairman") from among its members.

(d) Members of the Commission shall each be compensated at a rate equal to the daily equivalent of the rate for GS-18 of the General Schedule under section 5332 of title 5, United States Code, for each day such member is engaged in the actual performance of duties vested in the Commission. Each member shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently.

(e) The Commission shall have an Executive Director, who shall be appointed (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service) by the Chairman with the approval of the Commission and shall be paid at a rate not in excess of the rate for GS-18 of the General Schedule under section 5332 of title 5, United States Code. The Executive Director shall have such duties as the Chairman may assign.

Membership.

Term.

Chairman.

Compensation.

5 USC 5332
note.80 Stat. 499;
83 Stat. 190.Executive Di-
rector.5 USC 101
et seq.

DUTIES OF COMMISSION

Sec. 202. (a) The Commission shall—

(1) undertake a review and study of the activities of the United States pursuant to existing laws and international conventions relating to marine mammals, including, but not limited to, the International Convention for the Regulation of Whaling, the Whaling Convention Act of 1949, the Interim Convention on the Conservation of North Pacific Fur Seals, and the Fur Seal Act of 1966;

(2) conduct a continuing review of the condition of the stocks of marine mammals, of methods for their protection and conservation, of humane means of taking marine mammals, of research programs conducted or proposed to be conducted under the authority of this Act, and of all applications for permits for scientific research;

(3) undertake or cause to be undertaken such other studies as it deems necessary or desirable in connection with its assigned duties as to the protection and conservation of marine mammals;

(4) recommend to the Secretary and to other Federal officials such steps as it deems necessary or desirable for the protection and conservation of marine mammals;

(5) recommend to the Secretary of State appropriate policies regarding existing international arrangements for the protection and conservation of marine mammals, and suggest appropriate international arrangements for the protection and conservation of marine mammals;

(6) recommend to the Secretary of the Interior such revisions of the Endangered Species List, authorized by the Endangered Species Conservation Act of 1969, as may be appropriate with regard to marine mammals; and

(7) recommend to the Secretary, other appropriate Federal officials, and Congress such additional measures as it deems necessary or desirable to further the policies of this Act, including provisions for the protection of the Indians, Eskimos, and Aleuts whose livelihood may be adversely affected by actions taken pursuant to this Act.

(b) The Commission shall consult with the Secretary at such intervals as it or he may deem desirable, and shall furnish its reports and recommendations to him, before publication, for his comment.

(c) The reports and recommendations which the Commission makes shall be matters of public record and shall be available to the public at all reasonable times. All other activities of the Commission shall be matters of public record and available to the public in accordance with the provisions of section 552 of title 5, United States Code.

(d) Any recommendations made by the Commission to the Secretary and other Federal officials shall be responded to by those individuals within one hundred and twenty days after receipt thereof. Any recommendations which are not followed or adopted shall be referred to the Commission together with a detailed explanation of the reasons why those recommendations were not followed or adopted.

COMMITTEE OF SCIENTIFIC ADVISORS ON MARINE MAMMALS

Establishment.

SEC. 203. (a) The Commission shall establish, within ninety days after its establishment, a Committee of Scientific Advisors on Marine Mammals (hereafter referred to in this title as the "Committee"). Such Committee shall consist of nine scientists knowledgeable in marine ecology and marine mammal affairs appointed by the Chair-

Membership.

49 Stat. 3079.
64 Stat. 421.
16 USC 916
note.
8 UST 2283;
15 UST 316;
20 UST 2992.
80 Stat. 1091.
16 USC 1151
note.

80 Stat. 926;
83 Stat. 283.
16 USC 668aa
note.

Reports and
recommendations.

Public infor-
mation.

81 Stat. 54.

man after consultation with the Chairman of the Council on Environmental Quality, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation, and the Chairman of the National Academy of Sciences.

(b) Except for United States Government employees, members of the Committee shall each be compensated at a rate equal to the daily equivalent of the rate for GS-18 of the General Schedule under section 5332 of title 5, United States Code, for each day such member is engaged in the actual performance of duties vested in the Committee. Each member shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently.

Compensation.

5 USC 5332 note.

80 Stat. 499; 83 Stat. 190.

Recommendations.

(c) The Commission shall consult with the Committee on all studies and recommendations which it may propose to make or has made, on research programs conducted or proposed to be conducted under the authority of this Act, and on all applications for permits for scientific research. Any recommendations made by the Committee or any of its members which are not adopted by the Commission shall be transmitted by the Commission to the appropriate Federal agency and to the appropriate committees of Congress with a detailed explanation of the Commission's reasons for not accepting such recommendations.

Transmittal to Federal agency and congressional committees.

COMMISSION REPORTS

SEC. 204. The Commission shall transmit to Congress, by January 31 of each year, a report which shall include—

Report to Congress.

- (1) a description of the activities and accomplishments of the Commission during the immediately preceding year; and
- (2) all the findings and recommendations made by and to the Commission pursuant to section 202 of this Act together with the responses made to these recommendations.

COORDINATION WITH OTHER FEDERAL AGENCIES

SEC. 205. The Commission shall have access to all studies and data compiled by Federal agencies regarding marine mammals. With the consent of the appropriate Secretary or Agency head, the Commission may also utilize the facilities or services of any Federal agency and shall take every feasible step to avoid duplication of research and to carry out the purposes of this Act.

ADMINISTRATION OF COMMISSION

SEC. 206. The Commission, in carrying out its responsibilities under this title, may—

- (1) employ and fix the compensation of such personnel;
- (2) acquire, furnish, and equip such office space;
- (3) enter into such contracts or agreements with other organizations, both public and private;
- (4) procure the services of such experts or consultants or an organization thereof as is authorized under section 3109 of title 5, United States Code (but at rates for individuals not to exceed \$100 per diem); and
- (5) incur such necessary expenses and exercise such other powers, as are consistent with and reasonably required to perform its functions under this title. Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel, and procurement) shall be provided the Commission by the General Serv-

80 Stat. 416.

ices Administration, for which payment shall be made in advance, or by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman and the Administrator of General Services.

AUTHORIZATION OF APPROPRIATIONS

SEC. 207. There are authorized to be appropriated for the fiscal year in which this title is enacted and for the next four fiscal years thereafter such sums as may be necessary to carry out this title, but the sums appropriated for any such year shall not exceed \$1,000,000. Not less than two-thirds of the total amount of the sums appropriated pursuant to this section for any such year shall be expended on research and studies conducted under the authority of section 202(a) (2) and (3) of this title.

Approved October 21, 1972.

1981 Amendment to the Marine Mammal Protection Act
of 1972*

* Pub. L. 97-58, 95 Stat. 979; 16 U.S.C. §1362, 1371-72, 1375, 1379-80, 1384, 1402 and 1406-07 (1981).

Public Law 97-58
97th Congress

An Act

To improve the operation of the Marine Mammal Protection Act of 1972, and for other purposes.

Oct. 9, 1981

[H.R. 4084]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Marine Mammal
Protection Act of
1972,
amendment.

SECTION 1. OPTIMUM SUSTAINABLE POPULATION.

(a) **BASIC AMENDMENT.**—Paragraph (8) of section 3 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(8)) (which Act shall hereafter in this Act be referred to as the “Act of 1972”) is repealed.

(b) **CONFORMING AMENDMENTS.**—(1) Section 2(6) of the Act of 1972 (16 U.S.C. 1361(6)) is amended by striking out “optimum carrying capacity” and inserting in lieu thereof “carrying capacity”.

(2) Section 3 of the Act of 1972 (16 U.S.C. 1362) is further amended—

(A) by amending paragraph (1) to read as follows:

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

“Depletion” or
“depleted.”

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

16 USC 1401.

“(B) a State, to which authority for the conservation and management of a species or population stock is transferred under section 109, determines that such species or stock is below its optimum sustainable population; or

Post, p. 982.

“(C) a species or population stock is listed as an endangered species or a threatened species under the Endangered Species Act of 1973.”

16 USC 1531
note.

(B) by striking out “the optimum carrying capacity of their habitat” in paragraph (2) and inserting in lieu thereof “their optimum sustainable population”;

(C) by redesignating paragraphs (9) through (15) as paragraphs (8) through (14), respectively;

(D) by striking out “optimum carrying capacity” in paragraph (8) (as so redesignated) and inserting in lieu thereof “carrying capacity”; and

(E) by amending paragraph (13) (as so redesignated) to read as follows:

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

“United States.”

SEC. 2. MORATORIUM ON TAKING AND IMPORTING MARINE MAMMALS.

Section 101 of the Act of 1972 (16 U.S.C. 1371) is amended—

(1) by amending subsection (a)—

(A) by striking out the first four sentences of paragraph (2) and inserting in lieu thereof the following: “(2) Marine mammals may be taken incidentally in the course of com-

16 USC 1374.
16 USC 1373.

mercial fishing operations and permits may be issued therefor under section 104 subject to regulations prescribed by the Secretary in accordance with section 103. In any event it shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate; provided that this goal shall be satisfied in the case of the incidental taking of marine mammals in the course of purse seine fishing for yellowfin tuna by a continuation of the application of the best marine mammal safety techniques and equipment that are economically and technologically practicable.”

(B) by striking out “is classified as belonging to an endangered species or threatened species pursuant to the Endangered Species Act of 1973 or” in paragraph (3)(B), and

(C) by adding at the end thereof the following new paragraphs:

16 USC 1531
note.

“(4)(A) During any period of five consecutive years, the Secretary shall allow the incidental, but not the intentional, taking, by citizens of the United States while engaging in commercial fishing operations, of small numbers of marine mammals of a species or population stock that is not depleted if the Secretary, after notice and opportunity for public comment—

“(i) finds that the total of such taking during such five-year period will have a negligible impact on such species or stock; and

“(ii) provides guidelines pertaining to the establishment of a cooperative system among the fishermen involved for the monitoring of such taking.

“(B) The Secretary shall withdraw, or suspend for a time certain, the permission to take marine mammals under subparagraph (A) if the Secretary finds, after notice and opportunity for public comment, that—

“(i) the taking allowed under subparagraph (A) is having more than a negligible impact on the species or stock concerned; or

“(ii) the policies, purposes and goals of this Act would be better served through the application of this title without regard to this subsection.

Sections 103 and 104 shall not apply to the taking of marine mammals under the authority of this paragraph.

“(5)(A) Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specified geographical region, the Secretary shall allow, during periods of not more than five consecutive years each, the incidental, but not intentional, taking by citizens while engaging in that activity within that region of small numbers of marine mammals of a species or population stock that is not depleted if the Secretary, after notice (in the Federal Register and in newspapers of general circulation, and through appropriate electronic media, in the coastal areas that may be affected by such activity) and opportunity for public comment—

“(i) finds that the total of such taking during each five-year (or less) period concerned will have a negligible impact on such species or stock and its habitat, and on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) or section 109(f); and

“(ii) prescribes regulations setting forth—

“(I) permissible methods of taking pursuant to such activity, and other means of effecting the least practicable

Notice,
publication in
Federal
Register.

Post, p. 982.

adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance; and

“(II) requirements pertaining to the monitoring and reporting of such taking.

“(B) The Secretary shall withdraw, or suspend for a time certain (either on an individual or class basis, as appropriate) the permission to take marine mammals under subparagraph (A) pursuant to a specified activity within a specified geographical region if the Secretary finds, after notice and opportunity for public comment (as required under subparagraph (A) unless subparagraph (C)(i) applies), that—

“(i) the regulations prescribed under subparagraph (A) regarding methods of taking, monitoring, or reporting are not being substantially complied with by a person engaging in such activity; or

“(ii) the taking allowed under subparagraph (A) pursuant to one or more activities within one or more regions is having, or may have, more than a negligible impact on the species or stock concerned.

“(C)(i) The requirement for notice and opportunity for public comment in subparagraph (B) shall not apply in the case of a suspension of permission to take if the Secretary determines that an emergency exists which poses a significant risk to the well-being of the species or stock concerned.

Emergency situation.

“(ii) Sections 103 and 104 shall not apply to the taking of marine mammals under the authority of this paragraph.”; and

16 USC 1373, 1374.

(2) by amending subsection (b)—

(A) by amending the matter preceding paragraph (1) to read as follows: “Except as provided in section 109, the provisions of this Act shall not apply with respect to the taking of any marine mammal by any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean if such taking—”, and

Post. p. 982.

(B) by amending paragraph (1) to read as follows:

“(1) is for subsistence purposes; or”.

SEC. 3. PROHIBITIONS AND PENALTIES.

(a) PROHIBITIONS.—(1) Section 102(a) of the Act of 1972 (16 U.S.C. 1372(a)) is amended—

(A) by inserting “109,” immediately after “104,” in the matter preceding paragraph (1);

(B) by redesignating paragraph (4) as paragraph (5); and

(C) by striking out paragraph (3) and inserting in lieu thereof the following:

“(3) for any person, with respect to any marine mammal taken in violation of this title, to possess that mammal or any product from that mammal;

“(4) for any person to transport, purchase, sell, or offer to purchase or sell any marine mammal or marine mammal product; and”.

(2) Section 102(b)(3) of such Act is amended by striking out “or which has been listed as an endangered species or threatened species pursuant to the Endangered Species Act of 1973”.

16 USC 1531 note.

(3) Section 102(d)(1) of such Act is amended by striking out “or endangered”.

(b) **PENALTIES.**—Section 105(a) of the Act of 1972 (16 U.S.C. 1375(a)) is amended by inserting “(1)” immediately after “(a)” and by inserting at the end thereof the following new paragraph:

“(2) In any case involving an alleged unlawful importation of a marine mammal or marine mammal product, if such importation is made by an individual for his own personal or family use (which does not include importation as an accommodation to others or for sale or other commercial use), the Secretary may, in lieu of instituting a proceeding under paragraph (1), allow the individual to abandon the mammal or product, under procedures to be prescribed by the Secretary, to the enforcement officer at the port of entry.”

SEC. 4. STATE MANAGEMENT.

(a) **TRANSFER OF MANAGEMENT AUTHORITY.**—Section 109 of the Act of 1972 (16 U.S.C. 1379) is amended—

(1) by redesignating subsections (c) and (d) as subsections (k) and (l), respectively; and

(2) by striking out subsections (a) and (b) and inserting in lieu thereof the following:

“Sec. 109. (a) No State may enforce, or attempt to enforce, any State law or regulation relating to the taking of any species (which term for purposes of this section includes any population stock) of marine mammal within the State unless the Secretary has transferred authority for the conservation and management of that species (hereinafter referred to in this section as ‘management authority’) to the State under subsection (b)(1).

“(b)(1) Subject to paragraph (2) and subsection (f), the Secretary shall transfer management authority for a species of marine mammal to a State if the Secretary finds, after notice and opportunity for public comment, that the State has developed and will implement a program for the conservation and management of the species that—

“(A) is consistent with the purposes, policies, and goals of this Act and with international treaty obligations;

“(B) requires that all taking of the species be humane;

“(C) does not permit the taking of the species unless and until—

“(i) the State has determined, under a process consistent with the standards set forth in subsection (c)—

“(I) that the species is at its optimum sustainable population (hereinafter in this section referred to as ‘OSP’), and

“(II) the maximum number of animals of that species that may be taken without reducing the species below its OSP, and

“(ii) the determination required under clause (i) is final and implemented under State law, and, if a cooperative allocation agreement for the species is required under subsection (d)(1), such an agreement is implemented;

“(D) does not permit the taking of a number of animals of the species that exceeds the maximum number determined pursuant to subparagraph (C)(i)(II), and, in the case of taking for subsistence uses (as defined in subsection (f)(2)), does not permit the taking of a number of animals that would be inconsistent with the maintenance of the species at its OSP;

“(E) does not permit the taking of the species for scientific research and public display purposes, except for taking for such purposes that is undertaken by, or on behalf of, the State;

State
conservation and
management
programs.

“(F) provides procedures for acquiring data, and evaluating such data and other new evidence, relating to the OSP of the species, and the maximum take that would maintain the species at that level, and, if required on the basis of such evaluation, for amending determinations under subparagraph (C)(i);

“(G) provides procedures for the resolution of differences between the State and the Secretary that might arise during the development of a cooperative allocation agreement under subsection (d)(1); and

“(H) provides for the submission of an annual report to the Secretary regarding the administration of the program during the reporting period.

“(2) During the period between the transfer of management authority for a species to a State under paragraph (1) and the time at which the implementation requirements under paragraph (1)(C)(ii) are complied with—

“(A) the State program shall not apply with respect to the taking of the species within the State for any purpose, or under any condition, provided for under section 101; and

“(B) the Secretary shall continue to regulate, under this title, all takings of the species within the State.

“(3) After the determination required under paragraph (1)(C)(i) regarding a species is final and implemented under State law and after a cooperative allocation agreement described in subsection (d)(1), if required, is implemented for such species—

“(A) such determination shall be treated, for purposes of applying this title beyond the territory of the State, as a determination made in accordance with section 103 and as an applicable waiver under section 101(a)(3);

“(B) the Secretary shall regulate, without regard to this section other than the allocations specified under such an agreement, the taking of the species—

“(i) incidentally in the course of commercial fishing operations (whether provided for under section 101(a) (2) or (4)), or in the course of other specified activities provided for under section 101(a)(5), in the zone described in section 3(14)(B), and

“(ii) for scientific research or public display purposes (other than by, or on behalf of, the State), except that any taking authorized under a permit issued pursuant to section 101(a)(1) after the date of the enactment of the 1981 amendment to this subsection allowing the removal of live animals from habitat within the State shall not be effective if the State agency disapproves, on or before the date of issuance of the permit, such taking as being inconsistent with the State program; and

“(C) section 101(b) shall not apply.

“(c) The State process required under subsection (b)(1)(C) must comply with the following standards:

“(1) The State agency with management authority for the species (hereinafter in this section referred to as the ‘State agency’) must make an initial determination regarding the factors described in clause (i) of that subsection. The State agency must identify, and make available to the public under reasonable circumstances, the documentation supporting such initial determination. Unless request for a hearing under paragraph (2) regarding the initial determination is timely made, the initial determination shall be treated as final under State law.

16 USC 1371.

16 USC 1373.

Ante, pp. 979, 980.

Ante, p. 979.

Compliance standards.

Hearing.

"(2) The State agency shall provide opportunity, at the request of any interested party, for a hearing with respect to the initial determination made by it under paragraph (1) at which interested parties may—

"(A) present oral and written evidence in support of or against such determination; and

"(B) cross-examine persons presenting evidence at the hearing.

Public notice.

The State agency must give public notice of the hearing and make available to the public within a reasonable time before commencing the hearing a list of the witnesses for the State and a general description of the documentation and other evidence that will be relied upon by such witnesses.

"(3) The State agency, solely on the basis of the record developed at a hearing held pursuant to paragraph (2), must make a decision regarding its initial determination under paragraph (1) and shall include with the record a statement of the findings and conclusions, and the reason or basis therefor, on all material issues.

Judicial review.

"(4) Opportunity for judicial review of the decision made by the State agency on the record under paragraph (3), under scope of review equivalent to that provided for in section 706(2) (A) through (E) of title 5, United States Code, must be available under State law. The Secretary may not initiate judicial review of any such decision.

Cooperative allocation agreement.

"(d)(1) If the range of a species with respect to which a determination under paragraph (1)(C)(i) of subsection (b) is made extends beyond the territorial waters of the State, the State agency and the Secretary (who shall first coordinate with the Marine Mammal Commission and the appropriate Regional Fishery Management Council established under section 302 of the Act of April 13, 1976 (16 U.S.C. 1852)) shall enter into a cooperative allocation agreement providing procedures for allocating, on a timely basis, such of the number of animals, as determined under paragraph (1)(C)(i)(II) of subsection (b), as may be appropriate with priority of allocation being given firstly to taking for subsistence uses in the case of the State of Alaska, and secondly to taking for purposes provided for under section 101(a) within the zone described in section 3(14)(B).

16 USC 1371.
Ante, p. 979.

"(2) If the State agency requests the Secretary to regulate the taking of a species to which paragraph (1) applies within the zone described in section 3(14)(B) for subsistence uses or for hunting, or both, in a manner consistent with the regulation by the State agency of such taking within the State, the Secretary shall adopt, and enforce within such zone, such of the State agency's regulatory provisions as the Secretary considers to be consistent with his administration of section 101(a) within such zone. The Secretary shall adopt such provisions through the issuance of regulations under section 553 of title 5, United States Code, and with respect to such issuance the Regulatory Flexibility Act, the Paperwork Reduction Act, Executive Order Numbered 12291, dated February 17, 1981, and the thirty-day notice requirement in subsection (d) of such section 553 shall not apply. For purposes of sections 105, 106, and 107, such regulations shall be treated as having been issued under this title.

Regulations.

5 USC 601 note.
44 USC 101 note.
46 FR 13193.

16 USC
1375-1377.

Revocation of
authority
transfer.

"(e)(1) Subject to paragraph (2), the Secretary shall revoke, after opportunity for a hearing, any transfer of management authority made to a State under subsection (b)(1) if the Secretary finds that the State program for the conservation and management of the species concerned is not being implemented, or is being implemented in a

manner inconsistent with the provisions of this section or the provisions of the program. The Secretary shall also establish a procedure for the voluntary return by a State to the Secretary of species management authority that was previously transferred to the State under subsection (b)(1).

“(2)(A) The Secretary may not revoke a transfer of management authority under paragraph (1) unless—

Revocation conditions.

“(i) the Secretary provides to the State a written notice of intent to revoke together with a statement, in detail, of those actions, or failures to act, on which such intent is based; and

“(ii) during the ninety-day period after the date of the notice of intent to revoke—

“(I) the Secretary provides opportunity for consultation between him and the State concerning such State actions or failures to act and the remedial measures that should be taken by the State, and

“(II) the State does not take such remedial measures as are necessary, in the judgment of the Secretary, to bring its conservation and management program, or the administration or enforcement of the program, into compliance with the provisions of this section.

“(B) When a revocation by the Secretary of a transfer of management authority to a State becomes final, or the State voluntarily returns management authority to the Secretary, the Secretary shall regulate the taking, and provide for the conservation and management, of the species within the State in accordance with the provisions of this Act (and in the case of Alaskan Natives, section 101(b) and subsection (i) of this section shall apply upon such revocation or return of management authority).

Ante, p. 981.

“(C)(1) The Secretary may not transfer management authority to the State of Alaska under subsection (b)(1) for any species of marine mammal unless—

Authority transfer to State of Alaska, restrictions.

“(A) the State has adopted and will implement a statute and regulations that insure that the taking of the species for subsistence uses—

“(i) is accomplished in a nonwasteful manner,

“(ii) will be the priority consumptive use of the species, and

“(iii) if required to be restricted, such restriction will be based upon—

“(I) the customary and direct dependence upon the species as the mainstay of livelihood,

“(II) local residency, and

“(III) the availability of alternative resources; and

“(B) the State has adopted a statute or regulation that requires that any consumptive use of marine mammal species, other than for subsistence uses, will be authorized during a regulatory year only if the appropriate agency first makes findings, based on an administrative record before it, that—

“(i) such use will have no significant adverse impact upon subsistence uses of the species, and

“(ii) the regulation of such use, including, but not limited to, licensing of marine mammal hunting guides and the assignment of guiding areas, will, to the maximum extent practicable, provide economic opportunities for the residents of the rural coastal villages of Alaska who engage in subsistence uses of that species.

Definitions.

“(2) For purposes of paragraph (1), the term ‘subsistence uses’ means the customary and traditional uses by rural Alaska residents of marine mammals for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of marine mammals taken for personal or family consumption; and for barter, or sharing for personal or family consumption. As used in this paragraph—

“(A) The term ‘family’ means all persons related by blood, marriage, or adoption, or any person living within a household on a permanent basis.

“(B) The term ‘barter’ means the exchange of marine mammals or their parts, taken for subsistence uses—

“(i) for other wildlife or fish or their parts, or

“(ii) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

“(g) Neither the transfer of management authority to a State under subsection (b)(1), nor the revocation or voluntary return of such authority under subsection (e), shall be deemed to be an action for which an environmental impact statement is required under section 102 of the National Environmental Policy Act of 1969.

42 USC 4332.

“(h) Nothing in this title shall prevent a Federal, State, or local government official or employee or a person designated under section 112(c) from taking, in the course of his duties as an official, employee, or designee, a marine mammal in a humane manner (including euthanasia) if such taking is for—

16 USC 1382.

“(1) the protection or welfare of the mammal,

“(2) the protection of the public health and welfare, or

“(3) the nonlethal removal of nuisance animals,

and, in any case in which the return of the mammal to its natural habitat is feasible, includes steps designed to achieve that result.

“(i) The Secretary may (after providing notice thereof in the Federal Register and in newspapers of general circulation, and through appropriate electronic media, in the affected area and providing opportunity for a hearing thereon in such area) prescribe regulations requiring the marking, tagging, and reporting of animals taken pursuant to section 101(b).

16 USC 1371.

Grants.

“(j) The Secretary may make grants to States to assist them—

“(1) in developing programs, to be submitted for approval under subsection (b), for the conservation and management of species of marine mammals; and

“(2) in administering such programs if management authority for such species is transferred to the State under such subsection.

Grants made under this subsection may not exceed 50 per centum of the costs of developing a State program before Secretarial approval, or of administering the program thereafter.”

16 USC 1379

note.

(b) **NO EFFECT ON CERTAIN COOPERATIVE AGREEMENTS.**—Nothing in the amendments made by subsection (a) shall be construed as affecting in any manner, or to any extent, any cooperative agreement entered into by a State under section 6(c) of the Endangered Species Act of 1973 (16 U.S.C. 1535(c)) before, on, or after the date of the enactment of this Act.

SEC. 5. MARINE MAMMAL RESEARCH.

Section 110(a) of the Act of 1972 (16 U.S.C. 1380(a)) is amended by adding at the end thereof the following new sentences: “In carrying out this subsection, the Secretary shall undertake a program of, and shall provide financial assistance for, research into new methods of

locating and catching yellowfin tuna without the incidental taking of marine mammals. The Secretary shall include a description of the annual results of research carried out under this section in the report required under section 103(f)."

16 USC 1373.

SEC. 6. MARINE MAMMAL COMMISSION.

Title II of the Act of 1972 (16 U.S.C. 1401-1407) is amended—

(1) by striking out "furnish its reports and recommendations to him, before publication, for his comment." in section 202(b) and inserting in lieu thereof "provide each annual report required under section 204, before submission to Congress, to the Secretary for comment."; and

16 USC 1402.

(2) by inserting "or provide such grants to," immediately after "agreements with" in section 206(3).

16 USC 1406.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

(a) **DEPARTMENT OF COMMERCE.**—There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out such functions and responsibilities as it may have been given under title I of the Marine Mammal Protection Act of 1972, \$7,223,000 for fiscal year 1982, \$8,000,000 for fiscal year 1983, and \$8,800,000 for fiscal year 1984.

16 USC 1384.

16 USC 1371.

(b) **DEPARTMENT OF THE INTERIOR.**—There are authorized to be appropriated to the Department of the Interior, for purposes of carrying out such functions and responsibilities as it may have been given under such title I, \$1,600,000 for fiscal year 1982, \$1,760,000 for fiscal year 1983, and \$2,000,000 for fiscal year 1984.

16 USC 1384.

(c) **MARINE MAMMAL COMMISSION.**—There are authorized to be appropriated to the Marine Mammal Commission, for purposes of carrying out title II of such Act of 1972, \$672,000 for fiscal year 1982, \$1,000,000 for fiscal year 1983, and \$1,100,000 for fiscal year 1984.

16 USC 1407.

16 USC 1401.

Approved October 9, 1981.

LEGISLATIVE HISTORY—H.R. 4084:

HOUSE REPORT No. 97-228 (Comm. on Merchant Marine and Fisheries).
CONGRESSIONAL RECORD, Vol. 127 (1981):

Sept. 21, considered and passed House.
Sept. 29, considered and passed Senate.

**Regulation Governing the Taking and Importing of
Marine Mammals, 1982***

* 50 C.F.R. §216 (1982).

**PART 216—REGULATIONS GOVERN-
ING THE TAKING AND IMPORTING
OF MARINE MAMMALS**

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216.2 Scope of regulations.

§ 216.1

- Sec.
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- 216.70 Basis and purpose.
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216.82 Determination to cancel the hearing.
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APPENDIX—TAKING OF MARINE MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATION; EXPEDITED PROCEDURES FOR CONSIDERATION OF PROPOSED QUOTAS AND AMENDED REGULATIONS

AUTHORITY: 16 U.S.C. 1361 et seq., unless otherwise noted.

SOURCE: 39 FR 1852, Jan. 15, 1974, unless otherwise noted.

Subpart A—Introduction

§ 216.1 Purpose of regulations.

The regulations in this part implement the Marine Mammal Protection Act of 1972, 86 Stat. 1027, 16 U.S.C. 1361-1407, Pub. L. 92-522, which, among other things, restricts the taking, possession, transportation, selling, offering for sale, and importing of marine mammals.

§ 216.2 Scope of regulations.

This Part 216 applies solely to marine mammals and marine mammal products as defined in § 216.3. For regulations under the Act, with respect to other marine mammals and marine mammal products, see 50 CFR Part 18.

§ 216.3 Definitions.

In addition to definitions contained in the Act, and unless the context otherwise requires, in this Part 216:

"Act" means the Marine Mammal Protection Act of 1972, 86 Stat. 1027, 16 U.S.C. 1361-1407, Pub. L. 92-522.

"*Alaskan Native*" means a person defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)) (85 Stat. 588) as a citizen of the United States who is of one-fourth degree or more Alaska Indian (including Tsimshian Indians enrolled or not enrolled in the Metlakta Indian Community), Eskimo, or Aleut blood or combination thereof. The term includes any Native, as so defined, either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or group, of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any Native village or Native group. Any such citizen enrolled by the Secretary of the Interior pursuant to section 5 of the Alaska Native Claims Settlement Act shall be conclusively presumed to be an Alaskan Native for purposes of this part.

"*Authentic native articles of handicrafts and clothing*" means items made by an Indian, Aleut or Eskimo which (a) were commonly produced on or before December 21, 1972, and (b) are composed wholly or in some significant respect of natural materials, and (c) are significantly altered from their natural form and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or similar mass copying devices. Improved methods of production utilizing modern implements such as sewing machines or modern tanning techniques at a tannery registered pursuant to § 216.23(c) may be used so long as no large scale mass production industry results. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. The formation of traditional native groups, such as a cooperative, is permitted so long as no large scale mass production results.

"*Commercial fishing operation*" means the lawful harvesting of fish

from the marine environment for profit as part of an on-going business enterprise. Such term shall not include sport fishing activities whether or not carried out by charter boat or otherwise, and whether or not the fish so caught are subsequently sold.

"*Endangered Species*" means a species or subspecies of marine mammal listed as "endangered" pursuant to the Endangered Species Act of 1973, 87 Stat. 884, Pub. L. 93-205 (see Part 17 of this title).

"*Incidental catch*" means the taking of a marine mammal (1) because it is directly interfering with commercial fishing operations, or (2) as a consequence of the steps used to secure the fish in connection with commercial fishing operations: *Provided*, That a marine mammal so taken must immediately be returned to the sea with a minimum of injury and further, that the taking of a marine mammal, which otherwise meets the requirements of this definition shall not be considered an incidental catch of that mammal if it is used subsequently to assist in commercial fishing operations.

"*Marine environment*" means the oceans and the seas, including estuarine and brackish waters.

"*Marine mammal*" means those specimens of the following orders, which are morphologically adapted to the marine environment, whether alive or dead, and any part thereof, including but not limited to, any raw, dressed or dyed fur or skin: Cetacea (whales and porpoises), Pinnipedia, other than walrus (seals and sea lions).

"*Native village or town*" means any community, association, tribe, band, clan or group.

"*Optimum sustainable population*" is a population size which falls within a range from the population level of a given species or stock which is the largest supportable within the ecosystem to the population level that results in maximum net productivity. Maximum net productivity is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth less losses due to natural mortality.

"*Pregnant*" means pregnant near term.

"Secretary" shall mean the Secretary of Commerce or his authorized representative.

"Subsistence" means the use of marine mammals taken by Alaskan Natives for food, clothing, shelter, heating, transportation, and other uses necessary to maintain the life of the taker or those who depend upon the taker to provide them with such subsistence.

"Take" means to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill, any marine mammal, including, without limitation, any of the following: The collection of dead animals, or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; or the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional acts which result in the disturbing or molesting of a marine mammal.

"Threatened species" means a species of marine mammal listed as "threatened" pursuant to the Endangered Species Act of 1973, 87 Stat. 884, Pub. L. 93-205.

"Wasteful manner" means any taking or method of taking which is likely to result in the killing of marine mammals beyond those needed for subsistence or for the making of authentic native articles of handicrafts and clothing or which results in the waste of a substantial portion of the marine mammal and includes, without limitation, the employment of a method of taking which is not likely to assure the capture or killing of a marine mammal, or which is not immediately followed by a reasonable effort to retrieve the marine mammal.

[39 FR 1852, Jan. 15, 1974, as amended at 41 FR 55336, Dec. 21, 1976]

§ 216.4 Other laws and regulations.

(a) *Federal*. Nothing in this part, nor any permit issued under authority of this part, shall be construed to relieve a person from any other requirements imposed by a statute or regulation of the United States, including any applicable statutes or regulations relating to wildlife and fisheries, health, quarantine, agriculture, or customs.

(b) *State laws or regulations*. See Subpart H of this part.

(1) Purport to authorize a State to issue permits in situations which would require a Federal permit under the Act unless and until appropriate Federal regulations have been issued under section 103 of the Act, and where appropriate, the Secretary has waived the moratorium on such taking or importation under section 101(a)(3) of the Act; or

(2) Purport to authorize a State to issue permits for scientific research or for public display (except that a State may, under authority of a general scientific research permit granted by the Secretary to it, assign individual scientific research permits to State employees or representatives of State universities or other State agencies, subject to the provisions of the general permit); or

(3) Purport to authorize the State to grant exemptions from the Act on the grounds of economic hardship.

(c) Any State may obtain a review and determination of its existing laws and regulations from the Secretary by submitting a written request to that effect to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, accompanied by the following documents, unless otherwise specified by the Secretary:

(1) A complete set of laws and regulations to be reviewed, certified as complete, true and correct, by the appropriate State official;

(2) A scientific description by species and population stock of the marine mammals to be subjected to such laws and regulations;

(3) A description of the organization staffing and funding for the administration and enforcement of the laws and regulations to be reviewed;

(4) A description where such laws and regulations provide for discretionary authority on the part of State officials to issue permits, of the procedures to be used in granting or withholding such permits and otherwise enforcing such laws; and

(5) Such other materials and information as the Secretary may request or which the State may deem necessary or advisable to demonstrate the

compatibility of such laws and regulations with the policy and purposes of the Act and the rules and regulations issued thereunder.

(d) In making a determination with respect to any State laws and regulations, the Secretary shall take into account:

(1) Whether such laws and regulations are consistent with the purposes and policies of the Act and the rules and regulations issued thereunder;

(2) The extent to which such laws and regulations are consistent with, or constitute an integrated management or protection program with, the laws and regulations of other jurisdictions whose activities may affect the same species or stocks or marine mammals; and

(3) The existence of or preparations for an overall State program regarding the protection and management of marine mammals to which the laws and regulations under review relate.

(e) To assist States in preparing laws and regulations relating to marine mammals, the Secretary will also, at the written request of any State, make a preliminary review of any such proposed laws or regulations. Such review will be strictly advisory in nature and shall not be binding upon the Secretary. Upon adoption of previously reviewed laws and regulations, the same shall be subject to a complete review for a final determination pursuant to these regulations. To be considered for preliminary review, all legislative and regulatory proposals must be forwarded to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, and certified by the appropriate State official. In addition, they shall be accompanied to the extent available with the same materials required under paragraph (b) of this section, unless otherwise provided by the Secretary.

(f) All determinations by the Secretary (other than as a result of preliminary reviews of proposed laws and regulations) shall be final and binding on the parties.

(g) The implementation and enforcement of all State laws and regulations previously approved by the Secretary pursuant to this section shall be sub-

ject to continuous monitoring and review by the Secretary pursuant to such rules and regulations as he may adopt. Any modifications, amendments, deletions or additions to laws or regulations previously approved shall be deemed to be new laws and regulations for the purposes of these regulations and shall require review and approval by the Secretary before their adoption.

(h) Notwithstanding the foregoing, nothing herein shall prevent (1) the taking of a marine mammal by a State or local government official pursuant to § 216.22 of the regulations in this part, or (2) the adoption or enforcement of any law or regulation relating to any marine mammal taken or imported prior to the effective date of the Act.

[39 FR 1852, Jan. 15, 1974, as amended at 41 FR 36662, Aug. 31, 1976]

§ 216.5 Payment of penalty.

The respondent shall have 30 days from receipt of the final assessment decision within which to pay the penalty assessed. Upon a failure to pay the penalty, the Secretary may request the Attorney General to institute a civil action in the appropriate United States District Court to collect the penalty.

[39 FR 1852, Jan. 15, 1974. Redesignated at 46 FR 61652, Dec. 18, 1981]

§ 216.6 Forfeiture and return of seized property.

(a) Whenever any cargo or marine mammal or marine mammal product has been seized pursuant to section 107 of the Act, the Secretary shall expedite any proceedings commenced under these regulations.

(b) Whenever a civil penalty has been assessed by the Secretary under these regulations, any cargo, marine mammal, or marine mammal product seized pursuant to section 107 of the Act shall be subject to forfeiture. If respondent voluntarily forfeits any such seized property or the monetary value thereof without court proceedings, the Secretary may apply the value thereof, if any, as determined by the Secretary, toward payment of the civil penalty.

(c) Whenever a civil penalty has been assessed under these regulations, and whether or not such penalty has been paid, the Secretary may request the Attorney General to institute a civil action in an appropriate United States District Court to compel forfeiture of such seized property or the monetary value thereof to the Secretary for disposition by him in such manner as he deems appropriate. If no judicial action to compel forfeiture is commenced within 30 days after final decision-making assessment of a civil penalty, pursuant to § 216.60, such seized property shall immediately be returned to the respondent.

(d) If the final decision of the Secretary under these regulations is that respondent has committed no violation of the Act or of any permit or regulations issued thereunder, any marine mammal, marine mammal product, or other cargo seized from respondent in connection with the proceedings under these regulations, or the bond or other monetary value substituted therefor, shall immediately be returned to the respondent.

(e) If the Attorney General commences criminal proceedings pursuant to section 105(b) of the Act, and such proceedings result in a finding that the person accused is not guilty of a criminal violation of the Act, the Secretary may institute proceedings for the assessment of a civil penalty under this part: *Provided*, That if no such civil penalty proceedings have been commenced by the Secretary within 30 days following the final disposition of the criminal case, any property seized pursuant to section 107 of the Act shall be returned to the respondent.

(f) If any seized property is to be returned to the respondent, the Regional Director shall issue a letter authorizing such return. This letter shall be dispatched to the respondent by registered mail, return receipt requested, and shall identify the respondent, the seized property, and, if appropriate, the bailee of the seized property. It shall also provide that upon presentation of the letter and proper identification, the seized property is authorized to be released. All charges for storage, care, or handling of the seized property accruing 5 days or more after

the date of the return receipt shall be for the account of the respondent: *Provided*, That if it is the final decision of the Secretary under these regulations that the respondent has committed the alleged violation, all charges which have accrued for the storage, care, or handling of the seized property shall be for the account of the respondent.

[39 FR 1852, Jan. 15, 1974. Redesignated at 46 FR 61652, Dec. 18, 1981]

§ 216.7 Holding and bonding.

(a) Any marine mammal, marine mammal product, or other cargo seized pursuant to section 107 of the Act shall be delivered to the appropriate Regional Director of the National Marine Fisheries Service (see § 201.2 of this title) or his designee, who shall either hold such seized property or arrange for the proper handling and care of such seized property.

(b) Any arrangement for the handling and care of seized property shall be in writing and shall state the compensation to be paid. The Regional Director of the National Marine Fisheries Service, or his designee, shall attempt immediately to notify the respondent by telephone, but in any case shall, within 48 hours of the receipt of the seized property, dispatch notice thereof by registered or certified mail, return receipt requested, to the respondent. Such notice shall describe the property seized, including its declared value, and state the time, place, and reason for the seizure. Such notice shall also give the name and telephone number of a person in the Regional Director's Office who may be contacted regarding such seized property.

(c) The Regional Director of the National Marine Fisheries Service, upon written request of the respondent, may permit the respondent to post a bond or other surety satisfactory to the Regional Director, in lieu of the seized property: *Provided*, That posting of bond or other surety will not be permitted in the case of a living marine mammal seized under the Act. Such bond or other surety shall be in the amount of \$5,000 for each alleged violation, as determined by the Regional Director, or an amount equal to

the value of the seized property, whichever is greater. Such posting of bond or other surety will not be permitted unless the Regional Director is convinced that the respondent intends to maintain possession or control of the seized property until all proceedings regarding the seized property are completed; or unless the Regional Director is convinced that release of the seized property will not adversely interfere with such proceedings or with the purposes of the Act.

[39 FR 1852, Jan. 15, 1974. Redesignated at 46 FR 61652, Dec. 18, 1981]

§ 216.8 Enforcement officers.

Enforcement Agents of the National Marine Fisheries Service shall enforce the provisions of the Act and may take any actions authorized by the Act with respect to enforcement. In addition, the Secretary may utilize, by agreement, the personnel, services, and facilities of any other Federal Agency for the purposes of enforcing this Act. Pursuant to the terms of section 107(b) of the Act, the Secretary may also designate officers and employees of any State or of any possession of the United States to enforce the provisions of this Act.

[39 FR 1852, Jan. 15, 1974. Redesignated at 46 FR 61652, Dec. 18, 1981]

Subpart B—Prohibitions

§ 216.11 Prohibited taking.

Except as otherwise provided in Subparts C, D, and I of this Part 216 or in Part 228, it is unlawful for:

(a) Any person, vessel, or conveyance subject to the jurisdiction of the United States to take any marine mammal on the high seas, or

(b) Any person, vessel, or conveyance to take any marine mammal in waters or on lands under the jurisdiction of the United States, or

(c) Any person subject to the jurisdiction of the United States to take any marine mammal during the moratorium.

[39 FR 1852, Jan. 15, 1974, as amended at 47 FR 21254, May 18, 1982]

§ 216.12 Prohibited importation.

(a) Except as otherwise provided in Subparts C and D of this Part 216, it is unlawful for any person to import any marine mammal or marine mammal product into the United States.

(b) Regardless of whether an importation is otherwise authorized pursuant to Subparts C and D of this Part 216, it is unlawful for any person to import into the United States any:

(1) Marine mammal:

(i) Taken in violation of the Act, or

(ii) Taken in another country in violation to the laws of that country;

(2) Any marine mammal product if

(i) The importation into the United States of the marine mammal from which such product is made would be unlawful under paragraph (b)(1) of this section, or

(ii) The sale in commerce of such product in the country of origin if the product is illegal.

(c) Except in accordance with an exception referred to in Subpart C and §§ 216.31 (regarding scientific research permits only) and 216.32 of this Part 216, it is unlawful to import into the United States any:

(1) Marine mammal which was pregnant at the time of taking.

(2) Marine mammal which was nursing at the time of taking, or less than 8 months old, whichever occurs later.

(3) Specimen of an endangered or threatened species of marine mammal.

(4) Specimen taken from a depleted species or stock of marine mammals, or

(5) Marine mammal taken in an inhumane manner.

(d) It is unlawful to import into the United States any fish, whether fresh, frozen, or otherwise prepared, if such fish was caught in a manner proscribed by the Secretary of Commerce for persons subject to the jurisdiction of the United States, whether or not any marine mammals were in fact taken incident to the catching of the fish.

§ 216.13 Prohibited uses, possession, transportation, and sales.

It is unlawful for:

(a) Any person to use any port, harbor or other place under the juris-

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diction of the United States for any purpose in any way connected with a prohibited taking or an unlawful importation of any marine mammal or marine mammal product; or

(b) Any person subject to the jurisdiction of the United States to possess any marine mammal taken in violation of the Act or these regulations, or to transport, sell, or offer for sale any such marine mammal or any marine mammal product made from any such mammal.

(c) Any person subject to the jurisdiction of the United States to use in a commercial fishery, any means or method of fishing in contravention of regulations and limitations issued by the Secretary of Commerce for that fishery to achieve the purposes of this Act.

§ 216.14 Marine mammals taken before the Act.

(a) Section 102(e) of the Act provides, in effect, that the Act shall not apply to any marine mammal taken prior to December 21, 1972, or to any marine mammal product, consisting of or composed in whole or in part of, any marine mammal taken before that date. This prior status of any marine mammal or marine mammal product may be established by submitting to the Director, National Marine Fisheries Service prior to, or at the time of importation, an affidavit containing the following:

- (1) The Affiant's name and address;
- (2) Identification of the Affiant;
- (3) A description of the marine mammals or marine mammal products which the Affiant desires to import;
- (4) A statement by the Affiant that, to the best of his knowledge and belief, the marine mammals involved in the application were taken prior to December 21, 1972;
- (5) A statement by the Affiant in the following language:

The foregoing is principally based on the attached exhibits which, to the best of my knowledge and belief, are complete, true and correct. I understand that this affidavit is being submitted for the purpose of inducing the Federal Government to permit the importation of—under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407) and regulations promulgated thereunder, and that any false statements

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may subject me to the criminal penalties of 13 U.S.C. 1001, or to penalties under the Marine Mammal Protection Act of 1972.

(b) Either one of two exhibits shall be attached to such affidavit, and will contain either:

(1) Records or other available evidence showing that the product consists of or is composed in whole or in part of marine mammals taken prior to the effective date of the Act. Such records or other evidentiary material must include information on how, when, where, and by whom the animals were taken, what processing has taken place since taking, and the date and location of such processing; or

(2) A statement from a government agency of the country of origin exercising jurisdiction over marine mammals that any and all such mammals from which the products sought to be imported were derived were taken prior to December 21, 1972.

(c) No pre-Act marine mammal or pre-Act marine mammal product may be imported unless the requirements of this section have been fulfilled.

(d) This section has no application to any marine mammal or marine mammal product intended to be imported pursuant to §§ 216.21, 216.31 or § 216.32.

§ 216.15 Depleted species.

The following listed species have been designated by the Director as depleted pursuant to the provisions of the Act.

- (a) Hawaiian monk seal (*Monachus schauinslandi*).
- (b) Bowhead whale (*Balaena mysticetus*).

[41 FR 30120, July 22, 1976, as amended at 42 FR 60150, Nov. 25, 1977]

Subpart C—General Exceptions

§ 216.21 Actions permitted by international treaty, convention, or agreement.

The Act and these regulations shall not apply to the extent that they are inconsistent with the provisions of any international treaty, convention or agreement, or any statute implementing the same relating to the taking or importation of marine mammals or

marine mammal products, which was existing and in force prior to December 21, 1972, and to which the United States was a party. Specifically, the regulations in Subpart B of this part and the provisions of the Act shall not apply to activities carried out pursuant to the Interim Convention on the Conservation of North Pacific Fur Seals signed at Washington on February 9, 1957, and the Fur Seal Act of 1966, 16 U.S.C. 1151 through 1187, as in each case, from time to time amended.

§ 216.22 Taking by State or local government officials.

(a) A State or local government official or employee may take a marine mammal in the normal course of his duties as an official or employee, and no permit shall be required, if such taking:

(1) Is accomplished in a humane manner;

(2) Is for the protection or welfare of such mammal or for the protection of the public health or welfare; and

(3) Includes steps designed to insure return of such mammal, if not killed in the course of such taking, to its natural habitat. In addition, any such official or employee may, incidental to such taking, possess and transport, but not sell or offer for sale, such mammal and use any port, harbor, or other place under the jurisdiction of the United States. All steps reasonably practicable under the circumstances shall be taken by any such employee or official to prevent injury or death to the marine mammal as the result of such taking. Where the marine mammal in question is injured or sick, it shall be permissible to place it in temporary captivity until such time as it is able to be returned to its natural habitat. It shall be permissible to dispose of a carcass of a marine mammal taken in accordance with this subsection whether the animal is dead at the time of taking or dies subsequent thereto.

(b) Each taking permitted under this Section shall be included in a written report to be submitted to the Secretary every six months beginning December 31, 1973. Unless otherwise per-

mitted by the Secretary, the report shall contain a description of:

(1) The animal involved;

(2) The circumstances requiring the taking;

(3) The method of taking;

(4) The name and official position of the State official or employee involved;

(5) The disposition of the animal, including in cases where the animal has been retained in captivity, a description of the place and means of confinement and the measures taken for its maintenance and care; and

(6) Such other information as the Secretary may require.

§ 216.23 Native exceptions.

(a) *Taking.* Notwithstanding the prohibitions of Subpart B of this Part 216, but subject to the restrictions contained in this section, any Indian, Aleut, or Eskimo who resides on the coast of the North Pacific Ocean or the Arctic Ocean may take any marine mammal without a permit, if such taking is:

(1) By Alaskan Natives who reside in Alaska for subsistence, or

(2) For purposes of creating and selling authentic native articles of handicraft and clothing, and

(3) In each case, not accomplished in a wasteful manner.

(b) *Restrictions.* (1) No marine mammal taken for subsistence may be sold or otherwise transferred to any person other than an Alaskan Native or delivered, carried, transported, or shipped in interstate or foreign commerce, unless:

(i) It is being sent by an Alaskan Native directly or through a registered agent to a tannery registered under paragraph (c) of this section for the purpose of processing, and will be returned directly or through a registered agent to the Alaskan Native; or

(ii) It is sold or transferred to a registered agent in Alaska for resale or transfer to an Alaskan Native; or

(iii) It is an edible portion and it is sold in an Alaskan Native village or town.

(2) No marine mammal taken for purposes of creating and selling authentic native articles of handicraft

and clothing may be sold or otherwise transferred to any person other than an Indian, Aleut or Eskimo, or delivered, carried, transported or shipped in interstate or foreign commerce, unless:

(i) It is being sent by an Indian, Aleut or Eskimo directly or through a registered agent to a tannery registered under paragraph (c) of this section for the purpose of processing, and will be returned directly or through a registered agent to the Indian, Aleut or Eskimo; or

(ii) It is sold or transferred to a registered agent for resale or transfer to an Indian, Aleut, or Eskimo; or

(iii) It has first been transformed into an authentic native article of handicraft or clothing; or

(iv) It is an edible portion and sold (A) in an Alaskan Native village or town, or (B) to an Alaskan Native for his consumption.

(c) Any tannery, or person who wishes to act as an agent, within the jurisdiction of the United States may apply to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, for registration as a tannery or an agent which may possess and process marine mammal products for Indians, Aleuts, or Eskimos. The application shall include the following information:

(i) The name and address of the applicant;

(ii) A description of the applicant's procedures for receiving, storing, processing, and shipping materials;

(iii) A proposal for a system of book-keeping and/or inventory segregation by which the applicant could maintain accurate records of marine mammals received from Indians, Aleuts, or Eskimos pursuant to this section;

(iv) Such other information as the Secretary may request;

(v) A certification in the following language:

I hereby certify that the foregoing information is complete, true and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining the benefit of an exception under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407) and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18

U.S.C. 1001, or to penalties under the Marine Mammal Protection Act of 1972.

(vi) The signature of the applicant.

The sufficiency of the application shall be determined by the Secretary, and in that connection, he may waive any requirement for information, or require any elaboration or further information deemed necessary. The registration of a tannery or other agent shall be subject to such conditions as the Secretary prescribes, which may include, but are not limited to, provisions regarding records, inventory segregation, reports, and inspection. The Secretary may charge a reasonable fee for processing such applications, including an appropriate apportionment of overhead and administrative expenses of the Department of Commerce.

(d) Notwithstanding the preceding provisions of this section, whenever, under the Act, the Secretary determines any species of stock of marine mammals to be depleted, he may prescribe regulations pursuant to section 103 of the Act upon the taking of such marine animals by any Indian, Aleut, or Eskimo and, after promulgation of such regulations, all takings of such marine mammals shall conform to such regulations.

§ 216.24 Taking and related acts incidental to commercial fishing operations.

(a)(1) No marine mammals may be taken in the course of a commercial fishing operation unless: The taking constitutes an incidental catch as defined in § 216.3, a general permit and certificate(s) of inclusion have been obtained in accordance with these regulations and such taking is not in violation of such permit, certificate(s), and regulations.

(2) A vessel engaged in commercial fishing operation involving the utilization of purse seines to capture yellowfin tuna and which does not operate under a general permit and certificates of inclusion shall not carry more than two speedboats.

(b) *General permits.* (1) General permits to allow the taking of marine mammals, except those for which taking is prohibited under the Endangered Species Act of 1973, in connec-

tion with commercial fishing operations will be issued to persons using fishing gear in any one of the following categories:

(i) *Category 1: Towed or dragged gear.* Commercial fishing operations utilizing towed or dragged gear such as bottom otter trawls, bottom pair trawls, multi-rig trawls, and dredging gear.

(ii) *Category 2: Encircling gear, pursue seining involving the intentional taking of marine mammals.* Commercial fishing operations utilizing purse seines to capture tuna by international encircling marine mammals. Only vessels that meet the fishing gear and equipment requirements contained in § 216.24(d)(2)(iv) of these regulations may be included in this category.

(iii) *Category 3: Encircling gear, pursue seining not involving the intentional taking of marine mammals.* Commercial fishing operations utilizing pursue seining, which do not intentionally encircle marine mammals.

(iv) *Category 4: Stationary gear.* Commercial fishing operations utilizing stationary gear such as traps, pots, weirs, and pound nets; and

(v) *Category 5: Other gear.* Commercial fishing operations utilizing trolling, gill nets, hooks and line gear, and any gear not classified under paragraph (b)(1)(i), (b)(1)(ii), (b)(1)(iii), or (b)(1)(iv) of this section.

(2) Permits shall be issued as general permits to a class of fishermen using one of the general categories of gear set out above. Any member of such class may apply for a general permit on behalf of any members of the class. Subsequent to the granting of general permit, vessel owners, managing owners, or operators (as required) may make application to be included under the terms of a general permit by obtaining a certificate of inclusion. Applications for a general permit shall contain:

(i) Name, address, and telephone number of the applicant. If the applicant is an organization or corporate entity, a copy of the corporate or organizational charter which sets forth the basis for application on behalf of a group or class of commercial fishermen must be included;

(ii) A description of permit for which application is being made;

(iii) A description of the fishing operations by which marine mammals are taken; and a statement explaining why the applicant cannot avoid taking marine mammals incidentally to commercial fishing operations;

(iv) The date when the general permit is requested to become effective;

(v) A list of the fish sought by persons requesting certificates under the general permit and the general areas of operations of their vessels.

(vi) A statement identifying the marine mammals and numbers of marine mammals which are expected to be taken under the general permit;

(vii) A statement by the applicant demonstrating that the requested taking of marine mammal species or stocks during commercial fishing operations is consistent with the purposes of the Act, and the applicable regulations established under section 103 of the Act.

(viii) A description of the procedures and techniques that will be utilized in order that takings under the permit will be consistent with the purposes and policies of the Act and these regulations; and

(ix) A certification, signed by the applicant, in the following language: I certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a general permit under the Marine Mammal Protection Act of 1972 and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or the penalties provided under the Marine Mammal Protection Act of 1972.

(3) The original and four copies of the application for general permit shall be submitted to the Assistant Administrator for Fisheries (hereinafter, the Assistant Administrator), National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, DC 20235. Applications should be received not less than 180 days prior to the date upon which the

permit is to become effective. Assistance may be obtained by writing the Assistant Administrator or by calling the Office of Marine Mammals and Endangered Species, telephone number 202-634-7461.

(4) A general permit shall be valid for the time period indicated on the face of the permit. General permits may contain terms and conditions prescribed in accordance with section 104(b)(2) of the Act, 16 U.S.C. 1374(b)(2). General permits may be suspended, revoked, modified, or denied. Procedures governing permit sanctions or denials for reasons relating to enforcement are found at Subpart D of 15 CFR Part 904.

(5) The Assistant Administrator shall determine the adequacy and completeness of an application, and if found to be adequate and complete will promptly publish a notice of receipt of such application in the **FEDERAL REGISTER**. Interested parties will have thirty days from the date of publication in which to submit written comments with respect to the granting of such permit.

(6) If within thirty days after the date of publication of the **FEDERAL REGISTER** notice concerning receipt of an application for a general permit, any interested party or parties request a hearing on the application, the Assistant Administrator may within sixty days following the date of publication of the **FEDERAL REGISTER** notice afford such party or parties an opportunity for such a hearing. Any hearing held in connection with an application for a general permit shall be conducted in the same manner as hearings convened in connection with a scientific research or a public display permit application under § 216.33.

(7) There is no fee for filing an application for a general permit.

(c) *Certificates of inclusion*—(1) *Vessel certificates of inclusion*. The owner or managing owner of a vessel that participates in commercial fishing operations for which a general permit is required under this subpart shall be the holder of a valid vessel certificate of inclusion under that general permit. Such certificates shall not be transferable and shall be renewed annually. Provided five (5) days advance written

notice is given, a vessel certificate holder may surrender his certificate to the Regional Office from which the certificate was issued. However, once surrendered the certificate shall not be returned nor shall a new certificate be issued before the end of the calendar year. This provision shall not apply when a change of vessel ownership occurs.

(2) *Operator's certificate of inclusion*. The person in charge of and actually conducting fishing operations (hereinafter referred to as the operator) on any vessel engaged in commercial fishing operations for which a Category 2 general permit is required under this subpart, shall be the holder of a valid operator's certificate of inclusion. These certificates are not transferable and will be valid only on any purse seine vessel having a valid vessel certificate of inclusion for Category 2. In order to receive a certificate of inclusion, the operator shall have satisfactorily completed required training. An operator's certificate of inclusion shall be renewed annually.

(3) A vessel certificate issued pursuant to paragraph (c)(1) of this section shall be aboard the vessel while it is engaged in fishing operations and the operator's certificate issued pursuant to paragraph (c)(2) of this section shall be in the possession of the operator to whom it was issued. Certificates shall be shown upon request to an enforcement agent or other designated agent of the National Marine Fisheries Service. However, vessels and operators at sea on a fishing trip on the expiration date of their certificate of inclusion, to whom or to which a certificate of inclusion for the next year has been issued, may take marine mammals under the terms of the new certificate.

The vessel owners or operators are obligated to obtain physically or to place the new certificate aboard, as appropriate, when the vessel next returns to port.

(4) Application(s) for certificates of inclusion under paragraph (c)(1) of this section should be addressed as follows:

(i) Category 1, 3, 4, and 5 applications:

(A) Owners or managing owners of vessels registered in Colorado, Idaho, Montana, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, should make application to the Regional Director, Northwest Region, National Marine Fisheries Service, 1700 Westlake Avenue, Seattle, Washington 98102.

(B) Owners or managing owners of vessels registered in Arizona, California, Hawaii, Nevada, and the territories of American Samoa, Guam, and the Trust Territory of the Pacific Islands should make application to the Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

(C) Owners or managing owners of vessels registered in Alaska should make application to the Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

(D) Owners or managing owners of vessels registered in Connecticut, Delaware, District of Columbia, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin should make application to the Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

(E) Owners or managing owners of vessels registered in Alabama, Arkansas, Florida, Georgia, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, New Mexico, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, and Virgin Islands, should make application to the Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Gandy Boulevard North, Duval Building, St. Petersburg, Florida 33702.

(i) Category 2 applications: Owners or managing owners of purse seine vessels in this category shall make application to the field office, Southwest Region, National Marine Fisheries Service, 1140 North Harbor Drive, Room 7, San Diego, California 92101.

(5) Applications for vessel certificates of inclusion under paragraph (c)(1) of this section shall contain:

(i) The name of the vessel which is to appear on the certificate(s) of inclusion;

(ii) The category of the general permit under which the applicant wishes to be included;

(iii) The species of fish sought and general area of operations;

(iv) The identity of State and local commercial fishing licenses, if applicable, under which vessel operations are conducted, and dates of expiration;

(v) The name of the operator and date of training, if applicable; and

(vi) The name and signature of the applicant, whether owner or managing owner, address, and if applicable, the organization acting on behalf of the vessel.

(6) *Fees.* (i) Applications for certificates of inclusion under paragraph (c)(1) of this section shall contain a payment for each vessel named in the application in accordance with the following schedule:

(A) Categories—1: Towed or dragged gear; 3: Encircling gear, purse seining not involving the intentional taking of marine mammals; 4: Stationary gear; and 5: Other gear—\$10.00.

(B) Category 2: Encircling gear, purse seining involving the intentional taking of marine mammals—\$200.00.

(ii) Except as provided herein, vessel owners or managing owners desiring a vessel certificate of inclusion under more than one category of the general permit will not be required to pay a full fee for each certificate. After the initial fee for a certificate is paid for each vessel, additional certificates will be issued for a fee of \$.50 (fifty cents) each. However, every application for a vessel certificate under Category 2 shall contain the full fee.

(iii) Notwithstanding the provisions of paragraph (c)(6)(i) of this section, an applicant whose income is below Federal poverty guidelines may, upon showing in his application that his income is below such guidelines, be issued a certificate under the following schedule of fee payment:

(A) Categories—1: Towed or dragged gear; 3: Encircling gear, purse seining not involving the intentional taking of

marine mammals; 4: Stationary gear; and 5: Other gear—\$1.00.

(B) Category 2: Encircling gear, purse seining involving the intentional taking of marine mammals—\$20.00.

(iv) A fee is not required for an operator's certificate of inclusion.

(v) The Assistant Administrator may change the amount of these required fees at any time he determines a different payment to be reasonable, and said change shall be accomplished by publication in the FEDERAL REGISTER of the new fee schedule.

(7) The Regional Office receiving applications for certificates of inclusion from vessel owners, managing owners, or operators shall determine the adequacy and completeness of such applications, and upon its determination that such applications are adequate and complete, it shall approve such applications and issue the certificate(s).

(8) Failure to comply with provisions of the general permit, certificate, or these regulations may lead to suspension, revocation, modification, or denial of a certificate of inclusion. It may also subject the certificate holder, vessel, vessel owner, operator, or master to the penalties provided under the Act. Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

(d) Terms and conditions of certificates under general permits shall include, but are not limited to the following:

(1) *Towed or dragged gear.* (i) A certificate holder may take marine mammals so long as such taking is an incidental occurrence in the course of normal commercial fishing operations. Marine mammals taken incidental to commercial fishing operations shall be immediately returned to the environment where captured without further injury.

(ii) A certificate holder may take such steps as are necessary to protect his catch, gear, or person from depredation, damage, or personal injury without inflicting death or injury to any marine mammal.

(iii) Only after all means permitted by paragraph (d)(1)(ii) of this section have been taken to deter a marine mammal from depredating the catch,

damaging the gear, or causing personal injury, may the certificate holder injure or kill the animal causing the depredation or immediate personal injury; however, in no event shall a certificate holder kill or injure an Atlantic bottlenosed dolphin, *Tursiops truncatus*, under the provisions of this paragraph. A certificate holder shall not injure or kill any animal permitted to be killed or injured under this paragraph unless the infliction of such damage is substantial and immediate and is actually being caused at the time such steps are taken. In all cases, the burden is on the certificate holder to fully report and demonstrate that the animal was causing substantial and immediate damage or about to cause personal injury and that all possible steps to protect against such damage or injury as permitted by paragraph (d)(1)(ii) of this section were taken and that such attempts failed.

(iv) Marine mammals taken in the course of commercial fishing operations shall be subject to the provisions of § 216.3 with respect to "Incidental catch," and may not be retained except where a specific permit has been obtained authorizing the retention.

(v) All certificate holders shall maintain logs of incidental take of marine mammals in such form as prescribed by the Assistant Administrator. All deaths or injuries to marine mammals occurring in the course of commercial fishing operations under the conditions of a general permit shall be immediately recorded in the log and reported in writing to the Regional Director to whom the certificate application was made, or to an enforcement agent or other designated agent of the National Marine Fisheries Service, at the earliest opportunity, but no later than five days after such occurrence, except that if a vessel at sea returns to port later than five days after such occurrence then it shall be reported within 48 hours after arrival in any port. Reports must include:

(A) The location, time, and date of the death or injury;

(B) The identity and number of marine mammals killed or injured; and

(C) A description of the circumstances which led up to and caused the death or injury.

(2) *Encircling gear, purse seining involving the intentional taking of marine mammals*—(1) *Quotas*:

(A) A certificated vessel may take marine mammals so long as the taking is an incidental occurrence in the course of normal commercial tuna purse seine fishing operations, and the fishing operations are under the immediate direction of a person who is the holder of a valid operator's certificate of inclusion; except that a vessel shall not encircle either:

(1) Pure schools of the coastal spotted dolphin (*Stenella attenuata*) stock, the Costa Rican spinner, and the eastern spinner dolphin (*Stenella longirostris*) stocks, or mixed schools including these stocks;

(2) Pure schools of any species of dolphin except the offshore spotted dolphin (*Stenella attenuata*) stock, the striped dolphin (*Stenella coeruleoalba*) species, and the common dolphin (*Delphinus delphis*) species; or

(3) Any other species or stock of marine mammals that do not have an allowable take as listed below or whose allowable take has been exceeded. The numbers of marine mammals that may be taken during each of the calendar years 1981 through 1985 by U.S. vessels in the course of commercial fishing operations will be limited as follows:

QUOTAS FOR EACH CALENDAR YEAR, 1981-85

Species/stock management unit	Take	Encirclement	Mortality ¹
Spotted dolphin (northern offshore) ²	16,570,000	10,336,000	20,500
Spotted dolphin (southern offshore).....	4,805,000	2,873,000	5,697
Spinner dolphin (northern whitebelly).....	1,205,000	699,000	5,321
Spinner dolphin (southern whitebelly) ³	566,000	329,000	2,506
Common dolphin (northern tropical) ⁴	723,000	450,000	1,890
Common dolphin (central tropical).....	2,619,000	845,000	8,112
Common dolphin (southern tropical).....	1,306,000	421,000	4,045

QUOTAS FOR EACH CALENDAR YEAR, 1981-85—Continued

Species/stock management unit	Take	Encirclement	Mortality ¹
Striped dolphin (northern tropical).....	28,000	21,000	429
Striped dolphin (central tropical).....	118,000	88,000	1,822
Striped dolphin (southern tropical).....	265,000	199,000	4,095

¹ The U.S. allowable mortality in any of the years 1981-85 shall not exceed 20,500.

² Fifty percent of replacement yield for the northern offshore spotted dolphin is 42,898; however, the maximum allowable mortality in any year is 20,500.

³ Includes allowance for mixed species take.

⁴ Includes Baja neritic dolphin stock.

(B) The incidental mortality of marine mammals permitted under the general permit for each category will be monitored according to the methodology published in the FEDERAL REGISTER. The Assistant Administrator shall determine on the basis of the evidence available to him the date upon which the allowable quotas will be reached or exceeded. Notice of the Assistant Administrator's determination shall be published in the FEDERAL REGISTER not less than seven days prior to the effective date.

(C) If at the time the net skiff attached to the net is released from the vessel at the start of a set, and species or stocks that are prohibited from being taken are not reasonably observable, the fact that individuals of that species or stock are subsequently taken will not be cause for issuance of a notice of violation provided that all procedures required by the applicable regulations have been followed.

(D) The general permit will be valid for a period not to exceed five years. The Assistant Administrator may, upon receipt of new information which in his opinion is sufficient to require modification of the general permit or regulations, propose to modify such after consultation with the Marine Mammal Commission. These modifications shall be consistent with and necessary to carry out the purposes of the Act. Any modifications proposed by the Assistant Administrator involving changes in the quotas shall include the statements re-

quired by section 103(d) of the Act. Modifications shall be proposed in the FEDERAL REGISTER and a public comment period shall be allowed. At the request of any interested person within 15 days after publication of the proposed modification in the FEDERAL REGISTER, the Assistant Administrator may hold a public hearing to receive and evaluate evidence in those circumstances where he has determined it to be consistent with and necessary to carry out the purposes of the Act. Such request may be for a formal hearing on the record before an Administrative Law Judge. Within 10 days after receipt of the request for a public hearing, the Assistant Administrator shall provide the requesting party or parties with his decision. If a request is denied the Assistant Administrator shall state the reasons for the denial. Within 10 days after receipt of a decision denying a request for a formal hearing, the requesting person may file a written notice of appeal with the Administrator. Based upon the evidence presented in the notice, the Administrator shall render a decision within 20 days from receipt of the notice.

(ii) *General conditions:* (A) Marine mammals incidentally taken shall be immediately returned to the environment where captured without further injury. In addition to the specific porpoise rescue requirements established in § 216.24(d)(2), the operators of purse seine vessels shall take every possible precaution to refrain from causing or permitting incidental mortality and serious injury of marine mammals. Operators shall not set on marine mammals when conditions of wind, sea state, visibility, or the number of marine mammals and/or fish prevent the effective use of back-down and other required porpoise rescue procedures.

(B) Operators may take such steps as are necessary to protect their gear or person from damage or threat of personal injury. However, all marine mammals taken in the course of commercial fishing operations shall be subject to the definition of "incidental catch" in § 216.3 of this part and may not be retained except where a specific

permit has been obtained authorizing the retention.

(C) Operators of all certificated vessels shall maintain daily marine mammal logs provided by the Regional Director, Southwest Region, National Marine Fisheries Service. Such logs shall be subject to inspection at the discretion of the Southwest Regional Director, or his designated personnel. Certified copies of completed marine mammal logs shall be mailed or delivered at the conclusion of each fishing voyage to the field office, Southwest Region, National Marine Fisheries Service, 1140 North Harbor Drive, Room 7, San Diego, California 92101, within 48 hours after arrival in any port. If no sets involving marine mammals were made during a voyage, a marine mammal log stating such shall be submitted.

(D) The vessel certificate holder shall notify the field office, Southwest Region, National Marine Fisheries Service, 1140 North Harbor Drive, Room 7, San Diego, California 92101, telephone 714-293-6540, of any change of vessel operator within at least 48 hours prior to departing on the next scheduled trip.

(iii) *Reporting requirements:* In accordance with § 216.24(f) of these regulations, the following specific reporting procedures shall be required:

(A) The vessel certificate holder of each certificated vessel, who has been notified via certified letter from the National Marine Fisheries Service that his vessel is required to carry an observer, shall notify the field office, Southwest Region, National Marine Fisheries Service, San Diego, California, telephone 714-293-6540 at least five (5) days in advance of the vessel's departure on a fishing voyage to allow for observer placement. After a fishing voyage is initiated, the vessel is obligated to carry an observer until the vessel returns to port and one of the following conditions is met:

(1) Unloads more than 400 tons of any species of tuna; or (2) unloads any amount of any species of tuna equivalent to one half of the vessel's carrying capacity; or (3) unloads its tuna catch after 40 days or more at sea from the date of departure. Further, the Regional Director, Southwest Region,

may consider special circumstances for exemptions to this definition, provided written requests clearly describing the circumstances are received at least ten (10) days prior to the termination or the initiation of a fishing voyage. A response to the written request will be made by the Regional Director within five (5) days after receipt of the request. A vessel whose vessel certificate holder has failed to comply with the provisions of this section may not engage in fishing operations for which a general permit is required.

(B) Masters of all certificated vessels carrying National Marine Fisheries Service observers shall allow observers to report, in coded form, information by radio concerning the accumulated take of marine mammals and other observer collected data at such times as specified by the Regional Director, Southwest Region. Individual vessel names and coded information reported by radio by the National Marine Fisheries Service observers shall remain confidential unless their release is authorized in writing by the operator of the vessel.

(C) The vessel certificate holder of each certificated vessel without an observer onboard, and fishing inside the Inter-American Tropical Tuna Commission's Yellowfin Regulatory Area is required to report within 48 hours prior to departure from port and within 48 hours after arrival in port, of the vessel's actual departure or arrival date, including any changes in schedules that may occur after the original notification. The report shall include the name of the vessel and the location of the port of the scheduled departure or arrival, and shall be telephoned to 714-233-5511, the Southwest Regional Office's 24-hour answering service.

(D) The Regional Director, Southwest Region, will provide to the public, periodic quota status reports summarizing the estimated incidental porpoise mortality by U.S. vessels of individual species and stock.

(iv) *Vessel gear and equipment requirements:* A vessel certificate issued pursuant to paragraph (c)(1) of this section will be valid only for a vessel equipped with a porpoise safety panel in its purse seine, and which uses the

other gear, equipment, and procedures described herein. The vessel certificate holder shall be held responsible for providing and maintaining, in a functional and seaworthy condition, the required porpoise safety panels and all other required gear and equipment used in the course of catching and landing tuna. The requirement for the porpoise safety panel and other gear and equipment are as follows:

(A) *Porpoise safety panel*—Class I and II vessels: For Class I purse seiners (400 short tons carrying capacity or less) and for Class II purse seiners (greater than 400 short tons carrying capacity, built before 1961), the porpoise safety panel shall be a minimum of 100 fathoms in length (as measured before installation), except that the minimum length of the panel in nets deeper than 10 strips shall be determined at a ratio of 10 fathoms in length for each strip that the net is deep. It shall be installed beginning 75 to 100 fathoms from the bow ortza, and shall extend toward the stern of the net protecting the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline which begins at the outboard end of the last bow bunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point. The porpoise safety panel shall consist of small mesh webbing not to exceed 1½" stretch mesh, extending from the corkline downward to a minimum depth equivalent to one strip of 100 meshes of 4¼" stretch mesh webbing.

(B) *Porpoise safety panel*—Class III vessels: For Class III purse seiners (greater than 400 short tons carrying capacity, built after 1960), the porpoise safety panel shall be a minimum of 180 fathoms in length (as measured before installation). It shall be installed beginning 80 to 100 fathoms from the bow ortza and shall extend toward the stern of the net protecting the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline which begins at the outboard end of the last bowbunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point. The porpoise safety panel shall

consist of small mesh webbing not to exceed 1¼" stretch mesh extending downward from the corkline and the base of the porpoise apron to a minimum depth equivalent to two strips of 100 meshes of 4¼" stretch mesh webbing.

(C) *Porpoise apron*: Each Class III vessel shall have installed in its purse seine net, a triangular-shaped porpoise apron consisting of small mesh not to exceed 1¼" stretch mesh, 85 to 95 fathoms in length, laced between the corkline and the porpoise safety panel. The bow end of the porpoise apron shall begin approximately 10 to 15 fathoms (depending on the depth of the net) outboard of the end of the third bunchline and extend toward the stern of the net such that the peak of the porpoise apron triangle shall coincide with the apex of the backdown channel in the net. The base of the porpoise apron shall be laced to the upper edge of the porpoise safety panel. The upper edges of the porpoise apron shall be tapered at a 5 mesh, 2 bar rate from each end such that the tapers intersect at the center of the porpoise apron. The depth of the porpoise apron at its center shall be 443 to 463 meshes.

(D) *Porpoise apron approval*: The porpoise apron shall be installed under the supervision of a National Marine Fisheries Service designated representative. A trial set(s) shall be conducted under supervision of a National Marine Fisheries Service designated representative after installation of the porpoise apron to insure proper installation and operation of the apron. During the trial set(s), the stern tie-down point and outboard bow bunchline mark shall be determined and permanently marked so as to be clearly visible from the vessel. Each time a super apron is reinstalled after removal from a net or the net depth is altered, the vessel and gear shall be made available for reinspection by an authorized National Marine Fisheries Service Inspector as specified by the Regional Director, Southwest Region, who may require that another trial set(s) be made for proper apron alignment and adjustment. The vessel certificate holder shall provide at least five (5) days advance notification to

the field office, Southwest Region, National Marine Fisheries Service, 1140 North Harbor Drive, Room 7, San Diego, California 92101, telephone 714-293-6540, of the time and place of installation of the porpoise apron system. The certificate of inclusion for any vessel whose certificate holder has failed to notify the National Marine Fisheries Service of the date of installation shall be invalid until completion of the apron inspection and trial set(s).

(E) *Porpoise safety panel markers*: Each end of the porpoise safety panel and porpoise apron shall be identified with an easily distinguishable marker.

(F) *Porpoise safety panel hand holds*: Throughout the length of the corkline under which the porpoise safety panel and porpoise apron are located, hand hold openings are to be secured so that the insertion of a 1½" diameter cylindrical-shaped object meets resistance.

(G) *Porpoise safety panel corkline hangings*: Throughout the length of the corkline under which the porpoise safety panel and porpoise apron are located, corkline hangings shall be inspected by the vessel operator following each trip. Hangings found to have loosened to the extent that a cylindrical object with a 1½" diameter will not meet resistance when inserted between the cork and corkline hangings, must be tightened so that a cylindrical object with a 1½" diameter cannot be inserted.

(H) *Bunchlines*: Bunchlines, other than bow bunchlines, shall be arranged around the perimeter of the net to allow at least three towing points to be established near one-quarter, one-half, and three-quarter net from the bow ortza. A towing point must be established between two adjacent bunchlines; one bunchline reversed or unattached at both ends. Six bunchlines other than bow bunchlines are necessary to establish three towing points. The towing ends of all bunchlines which can be utilized as towing points shall be marked so as to be clearly visible to speedboat drivers. At least a 20-fathom length of corkline shall be free from bunchlines at the apex of the backdown channel.

(I) *Speedboats*: Certificated vessels engaged in fishing operations involving setting on marine mammals shall carry a minimum of two speedboats in operating condition. All speedboats carried aboard purse seine vessels and in operating condition shall be rigged with towing bridles and towlines. Speedboat hoisting bridles shall not be substituted for towing bridles.

(J) *Rubber raft*: An inflatable rubber raft suitable to be used as a porpoise observation-and-rescue platform, shall be carried on all certificated vessels.

(K) *Facemask and snorkel*: At least two facemasks and snorkels shall be carried on all certificated vessels.

(L) *Floodlights and spotlight*: All certificated vessels shall be equipped with adequate floodlights suitable for use in darkness to attract fish toward the main vessel and spotlight to intermittently illuminate the backdown channel and apex.

(M) Vessel certificate holders may petition for an exemption from the regulations regarding vessel gear and equipment for the purpose of experimenting with alternate gear or procedures designed to reduce incidental serious injury and mortalities of marine mammals in the course of commercial fishing. The petition shall be made in writing to the Director, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731, and shall include detailed specifications of the proposed gear and procedure modifications. Modifications may be granted upon review and approval, on a trip by trip basis, only if a National Marine Fisheries Service designated representative is available and accompanies the vessel on the approved trip.

(v) *Vessel inspection*: (A) *Annual*: At least once during each calendar year, purse seine nets and other gear and equipment required by these regulations shall be made available for inspection by an authorized National Marine Fisheries Service Inspector as specified by the Regional Director, Southwest Region.

(B) *Reinspection*: Purse seine nets and other gear and equipment required by these regulations shall be made available for reinspection by an authorized National Marine Fisheries Service Inspector as specified by the

Regional Director, Southwest Region. The vessel certificate holder shall notify the Fleet Assistance Section, Southwest Region, National Marine Fisheries Service, 1140 N. Harbor Drive, Room 7, San Diego, California 92101, telephone 714-293-6540 of any net modification at least five (5) days prior to departure of the vessel on its next scheduled trip in order to determine whether a reinspection or trial set would be required.

(C) *Failure to pass inspection*: A certificate of inclusion for a vessel with gear which is not in compliance with these regulations or maintained in a functional and seaworthy condition, shall be invalid until such deficiencies in gear or conditions are corrected and approved by an authorized National Marine Fisheries Service Inspector.

(vi) *Operator training requirements*. All operators shall maintain proficiency sufficient to perform the procedures required herein, and must attend and satisfactorily complete a formal training session conducted under the auspices of the National Marine Fisheries Service in order to obtain their certificate of inclusion. At the training session an attendee shall be instructed concerning the provisions of the Marine Mammal Protection Act of 1972, the regulations promulgated pursuant to the Act, and the fishing gear and techniques which are required or will contribute to reducing serious injury and mortality of porpoise incidental to purse seining for tuna. Operators who have received a written certificate of satisfactory completion of training and who possess a current or previous calendar year certificate of inclusion will not be required to attend additional formal training sessions unless there are substantial changes in the Act, the regulations, or the required fishing gear and techniques. Additional training may be required for any operator who is found by the Regional Director, Southwest Region, to lack proficiency in the procedures required.

(vii) *Marine mammal release requirements*: All operators shall use the following procedures during all sets involving the incidental taking of marine mammals in association with the capture and landing of tuna.

(A) *Use of speedboats:* On every set involving marine mammals, two speedboats equipped for towing shall be immediately available. At least one shall be manned and in the water. The second one, may be manned or unmanned, and may remain either in the water or in the davits. Both shall be ready for use until backdown commences. Speedboats shall tow on bunchlines whenever net collapse begins or on the corkline if canopies of loose webbing form whenever necessary to prevent marine mammal entrapment.

(B) *Backdown procedure:* Backdown shall be performed following a purse seine set in which marine mammals are captured in the course of catching and landing tuna, and shall be continued until it is no longer possible to remove live marine mammals from the net by this procedure. Thereafter, other release procedures required shall be continued until all live animals have been released from the net.

(C) *Hand rescue:* During backdown, a minimum of two rescuers shall aid with the release of marine mammals. If live marine mammals remain in the net after backdown, a minimum of two rescuers shall hand release them.

(D) *Prohibited use of sharp or pointed instrument:* The use of a sharp or pointed instrument to remove any marine mammal from the net is prohibited.

(E) *Use of rubber raft, facemask, and snorkel:* A rubber raft suitable as a porpoise observation and rescue platform shall be launched inside the net near the time of tying down for the backdown maneuver. The raft shall be used by a crewman to assist the other rescuer(s) in disentangling and releasing live marine mammals from the net. The crewman in the raft shall use the facemask and snorkel to determine whether all live marine mammals are out of the net and, if they are not, make every effort to remove them before backdown is terminated.

Taking into consideration the safety of all personnel, all live marine mammals that remain in the net after backdown shall be herded to areas where they can be easily released.

(F) *Prohibited brailing of live marine mammals:* All release proce-

dures shall continue until all live marine mammals are removed from the net prior to initiating the brailing operation. Brailing live marine mammals from the net is prohibited.

(G) *Prohibited setting at sundown:* On every set involving marine mammals, the net skiff shall be released at least one and one-half hours before sunset; release of the net skiff after this time is prohibited.

(H) *Use of lights:* If the backdown maneuver or other required release procedures continue past one-half hour after sunset, lights shall be used to insure that release procedures are properly performed and that all live marine mammals are removed from the net. Floodlights shall be used to attract fish toward the main vessel. A spotlight shall be intermittently used to illuminate the backdown channel and apex until all live marine mammals are removed from the net.

(3) *Encircling gear, purse seining not involving the intentional taking of marine mammals.* (i) A certificate holder may take marine mammals so long as such taking is an incidental occurrence in the course of normal commercial fishing operations. Marine mammals taken incidental to commercial fishing operations shall be immediately returned to the environment where captured without further injury.

(ii) A certificate holder may take such steps as are necessary to protect his catch, gear, or person from depredation, damage or personal injury without inflicting death or injury to any marine mammal.

(iii) Only after all means permitted by paragraph (d)(3)(ii) of this section have been taken to deter a marine mammal from depredating the catch, damaging the gear, or causing personal injury, may the certificate holder injure or kill the animal causing the depredation or immediate damage, or about to cause immediate personal injury; however, in no event shall a certificate holder kill or injure an Atlantic bottlenosed dolphin, *Tursiops truncatus*, under the provisions of this paragraph. A certificate holder shall not injure or kill any animal permitted to be killed or injured under this paragraph unless the infliction of such

damage is substantial and immediate and is actually being caused at the time such steps are taken. In all cases, the burden is on the certificate holder to report fully and demonstrate that the animal was causing substantial and immediate damage or about to cause personal injury and that all possible steps to protect against such damage or injury as permitted by paragraph (d)(3)(ii) of this section were taken and that such attempts failed.

(iv) Marine mammals taken in the course of commercial fishing operations shall be subject to the provisions of § 216.3 with respect to "Incidental catch," and may be retained except where a specific permit has been obtained authorizing the retention.

(v) All certificate holders shall maintain logs of incidental take of marine mammals in such form as prescribed by the Assistant Administrator. All deaths or injuries to marine mammals occurring in the course of commercial fishing operations under the conditions of a general permit shall be immediately recorded in the log and reported in writing to the Regional Director, National Marine Fisheries Service, where a certificate application was made, or to an enforcement agent or other designated agent of the National Marine Fisheries Service, at the earliest opportunity but no later than five days after such occurrence, except that if a vessel at sea returns to port later than five days after such occurrence, then it shall be reported within forty-eight hours after arrival in port. Reports must include:

(A) The location, time, and date of the death or injury;

(B) The identity and number of marine mammals killed or injured; and

(C) A description of the circumstances which led up to and caused the death or injury.

(4) *Stationary gear.* (i) A certificate holder may take marine mammals so long as such taking is an incidental occurrence in the course of normal commercial fishing operations. Marine mammals taken incidental to commercial fishing operations shall be immediately returned to the environment

where captured without further injury.

(ii) A certificate holder may take such steps as are necessary to protect his catch, gear, or person from depredation, damage or personal injury without inflicting death or injury to any marine mammal.

(iii) Only after all means permitted by paragraph (d)(4)(ii) of this section have been taken to deter a marine mammal from depredating the catch, damaging the gear, or causing personal injury, may the certificate holder injure or kill the animal causing the depredation or immediate damage, or about to cause immediate personal injury; however, in no event shall a certificate holder kill or injure an Atlantic bottlenosed dolphin, *Tursiops truncatus*, under the provisions of this paragraph. A certificate holder shall not injure or kill any animal permitted to be killed or injured under this paragraph unless the infliction of such damage is substantial and immediate and is actually being caused at the time such steps are taken. In all cases, the burden is on the certificate holder to report fully and demonstrate that the animal was causing substantial and immediate damage or about to cause personal injury and that all possible steps to protect against such damage or injury as permitted by paragraph (ii) were taken and that such attempts failed.

(iv) Marine mammals taken in the course of commercial fishing operations shall be subject to the provisions of § 216.3 with respect to "Incidental catch," and may not be retained except where a specific permit has been obtained authorizing the retention.

(v) All certificate holders shall maintain logs of incidental take of marine mammals in such form as prescribed by the Assistant Administrator. All deaths or injuries to marine mammals occurring in the course of commercial fishing operations under the conditions of a general permit shall be immediately recorded in the log and reported in writing to the Regional Director, National Marine Fisheries Service, where a certificate application was made, or to an enforcement agent or other designated agent of the Na-

tional Marine Fisheries Service, at the earliest opportunity but no later than five days after such occurrence, except that if a vessel at sea returns to port later than five days after such occurrence, then it shall be reported within forty-eight hours after arrival in port. Reports must include:

(A) The location, time, and date of the death or injury;

(B) The identity and number of marine mammals killed or injured; and

(C) A description of the circumstances which led up to and caused the death or injury.

(5) *Other gear.* (i) A certificate holder may take marine mammals so long as such taking is an incidental occurrence in the course of normal commercial fishing operations. Marine mammals taken incidental to commercial fishing operations shall be immediately returned to the environment where captured without further injury.

(ii) A certificate holder may take such steps as are necessary to protect his catch, gear, or person from depredation, damage or personal injury without inflicting death or injury to any marine mammal.

(iii) Only after all means permitted by paragraph (d)(5)(ii) of this section have been taken to deter a marine mammal from depredating the catch, damaging the gear, or causing personal injury, may the certificate holder injure or kill the animal causing the depredation or immediate damage, or about to cause immediate personal injury; however, in no event shall a certificate holder kill or injure an Atlantic bottlenosed dolphin, *Tursiops truncatus*, under the provisions of this paragraph. A certificate holder shall not injure or kill any animal permitted to be killed or injured under this paragraph unless the infliction of such damage is substantial and immediate and is actually being caused at the time such steps are taken. In all cases, the burden is on the certificate holder to report fully and demonstrate that the animal was causing substantial and immediate damage or about to cause personal injury and that all possible steps to protect against such damage or injury as permitted by paragraph (d)(5)(ii) of this section

were taken and that such attempts failed.

(iv) Marine mammals taken in the course of commercial fishing operations shall be subject to the provisions of § 216.3 with respect to "Incidental catch," and may not be retained except where a specific permit has been obtained authorizing the retention.

(v) All certificate holders shall maintain logs of incidental take of marine mammals in such form as prescribed by the Assistant Administrator. All deaths or injuries to marine mammals occurring in the course of commercial fishing operations under the conditions of a general permit shall be immediately recorded in the log and reported in writing to the Regional Director, National Marine Fisheries Service, where a certificate application was made, or to an enforcement agent, or other designated agent of the National Marine Fisheries Service, at the earliest opportunity but no later than five days after such occurrence, except that if a vessel at sea returns to port later than five days after such occurrence, then it shall be reported within forty-eight hours after arrival in port. Reports must include:

(A) The location, time, and date of the death or injury;

(B) The identity and number of marine mammals killed or injured; and

(C) A description of the circumstances which led up to and caused the death or injury.

(vi) The number of Dall porpoise (*Phocoenoides dalli*) killed or seriously injured by Japanese vessels shall be limited to 5,500 animals per year. Any permit issued under this regulation shall indicate the measures by which the permit holder shall comply with the reporting requirements of paragraph (d)(5)(v) of this section. Any incidental take permit issued under this regulation shall allow retention of marine mammals for scientific research purposes and not require a separate permit under paragraph (d)(5)(iv).

(e) *Importation:* (1) It shall be illegal to import into the United States any fish, whether fresh, frozen or otherwise prepared, if such fish were caught in a manner prohibited by these regu-

lations or in a manner that would not be allowed in circumstances where a person subject to the jurisdiction of the United States would be required to have a certificate of inclusion in a general permit hereunder, whether or not any marine mammals were in fact taken incidental to the catching of the fish, unless the Assistant Administrator makes a finding and publishes such finding in the FEDERAL REGISTER, that such fishing, although not in conformity with the specific requirements of these regulations, is accomplished in a manner which does not result in an incidental mortality and serious injury rate in excess of that which results from fishing operations under these regulations.

(2) The following fish and categories of fish, which the Assistant Administrator has determined are involved with commercial fishing operations which cause the death or injury of marine mammals, are subject to the prohibitions and documentation requirements of this section:

(i) *Salmon and halibut.* The following U.S. Tariff Schedule Item Numbers identify these categories of salmon and halibut products which are imported into the United States and are to be covered by the documentation and certification regulations of § 216.24(e)(3):

- 110.20-25 Halibut, fresh or chilled.
- 110.20-30 Halibut, frozen.
- 110.20-45 Salmon, fresh or chilled.
- 110.10-50 Salmon, frozen.
- 110.70-40 Halibut, other—except portion controlled steaks.
- 111.48-00 Salmon, salted.
- 111.88-00 Salmon, smoked or kippered.
- 112.18-00 Salmon, preserved, not in oil.

(ii) *Yellowfin tuna.* The following U.S. Tariff Schedule Item Numbers identify the categories of tuna and tuna products under which yellowfin tuna is imported into the United States, and are subject to the importation restrictions of paragraph (e)(4) of this section after December 31, 1977:

- 110.10-20 Tuna; yellowfin, whole fish.
- 110.10-25 Tuna; yellowfin, eviscerated, head on.
- 110.10-30 Tuna; yellowfin, eviscerated, head off.
- 110.10-37 Tuna; yellowfin, other.

112.30-40 Tuna; canned, other than white meat, no oil—except cans marked as other than yellowfin tuna in a manner approved in advance by the Assistant Administrator.

112.34-00 Tuna; canned, other, no oil—except cans marked as other than yellowfin tuna in a manner approved in advance by the Assistant Administrator.

112.90-00 Tuna; canned, other, no oil—except cans marked as other than yellowfin tuna in a manner approved in advance by the Assistant Administrator.

(3) *Salmon and halibut.* All fish and categories of fish listed in paragraph (e)(2)(i) of this section shall be denied entry into the United States unless accompanied by a separate Fisheries Certificate of Origin (Standard Form 369-1) from each country whose flag vessels caught fish involved in the importation. The Fisheries Certificate of Origin should include the following information:

(i) The country of origin; and
(ii) The identity and quantity of fish; and, either

(iii) After the Assistant Administrator has published the finding referred to in paragraph (e)(1) of this section, a statement from a responsible official of the country of origin that the fishing technology permitted by the country of origin with respect to the species of fish presented for importation into the United States does not result in a rate of serious injury or death to marine mammals in excess of that which results from U.S. commercial fishing operations as prescribed by these regulations. Country of origin for the purposes of this section shall mean the country under whose flag the fish catching vessels are documented and whose fish are a part of any cargo or shipment of fish to be imported into the U.S. regardless of any transshipments; or

(iv) A statement by a responsible official of the country of origin or the master of the vessel which caught the fish that such fish were not caught in a manner prohibited for U.S. fishermen by these regulations. The statement shall identify the species, quantity, and exporter of the fish to which the statement refers; or

(v) Any nation may certify to the Assistant Administrator either (A) that all of its vessels fishing under its flag

are fishing in conformance with these regulations; or (B) a list of the vessels, by name and official number, fishing under such nation's flag which are fishing in conformance with these regulations; or (C) that all of the vessels fishing under such nation's flag, with the exception of any vessels specifically listed by name and official number, are fishing in conformance with these regulations. If methods (B) or (C) are used, the shipping documentation must also show the name and official number of the vessel which caught the fish presented for importation. The Assistant Administrator may then make a finding, and publish such finding in the FEDERAL REGISTER, that fish imports listed in paragraphs (e)(2)(i) from a nation or from an identified segment of a nation's fishing fleet, are exempted from the documentation provisions of this section.

(4)(i) *Yellowfin tuna*: All shipments of fish and products listed in paragraph (e)(2)(ii) of this section, from any nation, shall not be entered into the United States for consumption or withdrawn from warehouse for consumption unless a finding has been made pursuant to paragraph (e)(5)(i) of this section, and unless accompanied by the following documentation: (A) A separate Yellowfin Tuna Certificate of Origin (Standard Form 370-1) and (B) a bill of lading from each country whose flag vessels caught yellowfin tuna involved in the importation.

(ii) The Yellowfin Tuna Certificate of Origin must include the following information:

(A) Country of origin of the fishing vessel(s) involved;

(B) Exporter (name and address);

(C) Consignee (name and address);

(D) Identity and quantity of the yellowfin tuna to be imported, listed by U.S. Tariff Schedule Number;

(E) Name of vessel(s) which caught the yellowfin tuna;

(F) Fishing method used (i.e., purse seine, longline, pole and line, etc.);

(G) Other documentation as may be required by the Assistant Administrator, subsequent to granting a finding in paragraph (e)(5) of this section;

(H) Must be signed by either a responsible government official of the

country whose flag vessel caught the fish or the vessel master, below the following certification statements:

I certify that the yellowfin tuna described in (D) above was caught by flag vessels of a country either, (1) not required to obtain a finding from the United States Department of Commerce (National Marine Fisheries Service) under 50 CFR 216.24(e)(5), and the fish was not caught in a manner prohibited for United States fishermen by the United States Marine Mammal Regulations 50 CFR 216.24(d)(2), or (2) which has been found by the United States Department of Commerce (National Marine Fisheries Service) to be in conformance with the United States Marine Mammal Regulations 50 CFR 216.24(e)(5).

I certify that the above information is complete, true and correct to the best of my knowledge and belief. I understand that my making a false statement may subject me to the criminal penalties under the Marine Mammal Protection Act of 1972.

(I) Must also be signed by the exporter, under the following declaration:

The undersigned hereby declares that, based on the above statements, the yellowfin tuna herein offered for importation into the United States, was caught by flag vessels of (country) in conformance with the United States Marine Mammal Regulations 50 CFR 216.24.

(5)(i) Any tuna or tuna products in the classifications listed in paragraph (e)(2)(ii) of this section from countries of origin (as documented under (e)(4) above) whose vessels operate in the yellowfin tuna purse seine fishery in the eastern tropical Pacific Ocean, as determined by the Assistant Administrator; shall not be entered into the United States for consumption or subsequently withdrawn from warehouse for consumption unless the Assistant Administrator makes a finding in consultation with the U.S. Department of State, and publishes such finding in the FEDERAL REGISTER that fishing operations in the country of origin are conducted in conformance with U.S. regulations and standards as stated in paragraph (d)(2) of this section. The Assistant Administrator may make a finding that, although not in conformity with these regulations, such fishing is accomplished in a manner which does not result in an incidental mortality and serious injury in excess of that which result from U.S. fishing oper-

ations under these regulations. Upon such a finding unloading may be allowed. Country of origin for the purposes of this section (§ 216.24(e)) shall mean the country under whose flag the fish catching vessels are documented and whose fish are a part of any cargo or shipment of fish to be imported into the U.S. regardless of any transshipments.

(ii) Countries of origin desiring to obtain a finding which will allow the importation of products listed in paragraph (e)(2)(ii) of this section must submit, by appropriate government official, to the Assistant Administrator, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, DC 20235, the following information:

(A) A statement of the quantity and type (identified by U.S. Tariff Schedule Item Numbers listed in paragraph (e)(2)(i) of this section) of fish or fish products expected to be imported into the U.S.;

(B) A detailed description of the fishing technology and procedures utilized in tuna purse seine fishing to protect marine mammals so that a determination of conformance with § 216.24(d)(2) of these regulations can be made, or the effectiveness of any other equivalent technology or procedures can be assessed;

(C) A statement of the number of marine mammals killed or seriously injured (by species) incidental to the yellowfin tuna purse seine operations on porpoise for the previous year, and the manner in which the information was obtained (logbooks, observers, interviews, or other procedures);

(D) A statement of the number of marine mammals which will be allowed to be killed or seriously injured annually incidental to yellowfin tuna purse seine operations;

(E) A statement of the procedures to be required, including quotas and other controls which will meet the U.S. requirements to limit the level of mortality with specific reference to any species or stock designated as depleted; and

(F) A list of vessels which may be involved in the taking of marine mam-

mals incidental to yellowfin tuna purse seining.

(iii) The Assistant Administrator will review each nation's findings annually upon receipt of information required under paragraph (e)(5)(ii) which pertains to a preceeding calendar year, and a request of a continuation of a finding by the country of origin. This information should be submitted by September 1 preceding the calendar year for which the exportation is requested. The Assistant Administrator may require verification of statements made in connection with requests to allow importations. The Assistant Administrator will reconsider a finding upon a request from, and the submission of additional information from, the country of origin.

(6) *Fish refused entry.* If fish is denied entry under the provisions of § 216.24(e)(3) or (e)(4), the District Director of Customs shall refuse to release the fish for entry into the United States and shall issue a notice of such refusal to the importer or consignee.

(7) *Release under bond. Provided however,* That fish not accompanied or covered by the required documentation or certification when offered for entry may be entered into the United States if the importer or consignee gives a bond on Customs Form 7551, 7553, or 7595 for the production of the required documentation or certification. The bond shall be in the amount required under 19 CFR 25.4(a). Within 90 days after such Customs entry, or such additional period as the District Director of Customs may allow for good cause shown, the importer or consignee shall deliver a copy of the required documentation or certification to the District Director of Customs, and an original of the required documentation or a copy of the certification to the Regional Director of the National Marine Fisheries Service, unless the District Director of Customs has received notification from the National Marine Fisheries Service that the fish is covered by a certification. If such documentation, certification, or notification is not delivered to the District Director of Customs for the port of entry of such fish within 90 days of the date of Customs entry

or such additional period as may have been allowed by the District Director of Customs for good cause shown, the importer or consignee shall redeliver or cause to be redelivered to the District Director of Customs those fish which were released in accordance with this paragraph. In the event that any such fish is not redelivered within 30 days following the date specified in the preceding sentence, liquidated damages shall be assessed in the full amount of bond given on Form 7551. When the transaction has been charged against a bond given on Form 7553 or 7595, liquidated damages shall be assessed in the amount that would have been demanded under the preceding sentence under a bond given on Form 7551. Fish released for entry into the United States through use of the bonding procedure provided in this paragraph shall be subject to the civil and criminal penalties and the forfeiture provisions provided for under the Act if:

(i) The required documentation or certification is not delivered to the Regional Director of the National Marine Fisheries Service within 90 days of the date of Customs entry, or such additional period as may have been allowed by the District Director of Customs for good cause shown, or

(ii) The required certification is not on file in the office of the Assistant Administrator, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, DC 20235, within this 90 day period or such additional period as may have been allowed by the District Director of Customs for good cause shown. Fish refused entry into the United States shall also be subject to the civil and criminal penalties and the forfeiture provisions provided for under the Act.

(8) *Disposition of fish refused entry into the United States; redelivered fish.* Fish which is denied entry under § 216.24(e)(3) or (e)(4) or which is redelivered in accordance with § 216.24(e)(7) and which is not exported under Customs supervision within 90 days from the date of notice of refusal of admission or date of redelivery shall be disposed of under Customs laws and regulations. *Provided*

however, That any disposition shall not result in an introduction into the United States of fish caught in violation of the Marine Mammal Protection Act of 1972.

(f) *Observers.* (1) The vessel certificate holder of any certificated vessel shall, upon the proper notification by the National Marine Fisheries Service, allow an observer duly authorized by the Secretary to accompany the vessel on any or all regular fishing trips for the purpose of conducting research and observing operations, including collecting information which may be used in civil or criminal penalty proceedings, forfeiture actions, or permit or certificate sanctions.

(2) Research and observation duties shall be carried out in such a manner as to minimize interference with commercial fishing operations. The navigator shall provide true vessel locations by latitude and longitude, accurate to the nearest minute, upon request by the observer. No owner, master, operator, or crew member of a certificated vessel shall impair or in any way interfere with the research or observations being carried out.

(3) Marine mammals killed during fishing operations which are accessible to crewmen and requested from the certificate holder or master by the observer shall be brought aboard the vessel and retained for biological processing, until released by the observer for return to the ocean. Whole marine mammals designated as biological specimens by the observer shall be retained in cold storage aboard the vessel until retrieved by authorized personnel of the National Marine Fisheries Service when the vessel returns to port for unloading.

(4) The Secretary shall provide for the payment of all reasonable costs directly related to the quartering and maintaining of such observers on board such vessels. A vessel certificate holder who has been notified that the vessel is required to carry an observer, via certified letter from the National Marine Fisheries Service, shall notify the office from which the letter was received at least five days in advance of the fishing voyage to facilitate observer placement. A vessel certificate holder who has failed to comply with

the provisions of this section may not engage in fishing operations for which a general permit is required.

(5) It is unlawful for any person to forcibly assault, impede, intimidate, interfere with, influence or attempt to influence an observer placed aboard a vessel.

(g) *Penalties and rewards:* Any person or vessel subject to the jurisdiction of the United States shall be subject to the penalties provided for under the Act for the conduct of fishing operations in violation of these regulations. The Secretary shall recommend to the Secretary of the Treasury that an amount equal to one-half of the fine incurred but not to exceed \$2,500 be paid to any person who furnishes information which leads to a conviction for a violation of these regulations. Any officer, employee, or designated agent of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

(Approved by the Office of Management and Budget under control numbers 0648-0083 for paragraphs (b) and (c), 0648-0085 for paragraph (d), and 0648-004 for paragraph (e) of this section)

[45 FR 72187, Oct. 31, 1980, as amended at 46 FR 27056, May 15, 1981; 46 FR 42069, Aug. 18, 1981; 48 FR 57302, Dec. 29, 1983; 49 FR 1042, Jan. 6, 1984]

§ 216.25 Exempted marine mammals and marine mammal products.

(a) The provisions of the Act and these regulations shall not apply:

(1) To any marine mammal taken before December 21, 1972, or

(2) To any marine mammal product if the marine mammal portion of such product consists solely of a marine mammal taken before such date.

(b) The prohibitions contained in § 216.12(c) (3) and (4) shall not apply to marine mammals or marine mammal products imported into the United States before the date on which a notice is published in the *FEDERAL REGISTER* with respect to the designation of the species or stock concerned as depleted or endangered.

(c) Section 216.12(b) shall not apply to articles imported into the United

States before the effective date of the foreign law making the taking or sale, as the case may be, of such marine mammals or marine mammal products unlawful.

§ 216.26 Collection of certain marine mammal parts.

(a) Any bones, teeth or ivory of any dead marine mammal may be collected from a beach or from land within $\frac{1}{4}$ of a mile of the ocean. The term "ocean" includes bays and estuaries.

(b) Marine mammal parts so collected may be retained if registered within 30 days with an agent of the National Marine Fisheries Service, or an agent of the Bureau of Sport Fisheries and Wildlife.

(c) Registration shall include (1) the name of the owner, (2) a description of the article to be registered and (3) the date and location of collection.

(d) Title to any marine mammal parts collected under this section is not transferable unless consented to, in writing, by the Secretary.

Subpart D—Special Exceptions

§ 216.31 Scientific research permits and public display permits.

(a) The Director may issue permits authorizing the taking and importing of marine mammals for scientific research and public display except that no display permits will be issued for marine mammals from a species listed as depleted under § 216.15 of this part. Any person desiring to obtain such a permit may make application therefore to the Secretary. The sufficiency of the application shall be determined by the Secretary and, in that connection, he may waive any requirement for information, or require any elaboration or further information deemed necessary. The following information will be used as the basis for determining whether an application is complete and whether scientific research or a public display permit should be issued by the Secretary of Commerce. The Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals will review all completed applications submitted to them by the Secretary pursuant to para-

graph (b) of this section (39 FR 1851, January 15, 1974.) An original and four copies of the completed application shall be submitted to the Director, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, DC 20235. Assistance may be obtained by writing the Director or calling the Law Enforcement and Marine Mammal Protection Division in Washington, DC (area code 202), phone number 343-7780. In preparing an application for a scientific research or public display permit, provide the following information:

- (1) Title: As applicable, either—
 - (i) Application for Public Display Permit Under the Marine Mammal Protection Act of 1972, or
 - (ii) Application for Scientific Research Permit Under the Marine Mammal Protection Act of 1972.
- (2) List the date of the application.
- (3) If the Applicant is a partnership or a corporate entity set forth the details. If the marine mammal to be taken or imported, or the marine mammal product to be imported, is to be utilized or displayed by a party other than the Applicant, set forth the name of the party and such other information as would be required if such party were an Applicant.
- (4) Provide a statement on the purpose of the proposed taking or importing, including a brief description of:
 - (i) The need for the marine mammal(s) and/or marine mammal product(s); and
 - (ii) How they will be used.
- (5) If the application is for a scientific research permit, provide the following additional information:
 - (i) A detailed description of the scientific research project or program in which the marine mammal or product thereof is to be used, including the period of time over which the research will be conducted;
 - (ii) A list of the names and addresses of the sponsors or cooperating institutions and the scientists involved;
 - (iii) A copy of the formal research proposal or contract if one has been prepared;
 - (iv) A statement of whether the proposed research has broader signifi-

cance than the individual researcher's goals (i.e., does the proposed research respond directly or indirectly to recommendations of any national or international scientific body charged with research or management of marine mammals and, if so, how?); and

(v) A description of the arrangements, if any, for the disposition of any dead specimen or its skeleton or other remains, for the continual benefit to science, in a museum or other institutional collection.

(6) Describe any marine mammals to be taken or imported, whether for public display or scientific research or any marine mammal products to be imported, including the following:

(i) A list of each species to be taken or imported and the number of each, including the common and scientific name;

(ii) A physical description of each animal to be taken or imported, including the age, size, and sex;

(iii) A list of the probable dates of capture and importation for each animal and the location of capture and importation, as specifically as possible;

(iv) A description of the status of the stock of each species related insofar as possible to the location or area of taking;

(v) A description of the manner of taking for each marine mammal, including the gear to be used;

(vi) The name and qualifications of the persons or entity which will capture the animals;

(vii) If the capture is to be done by a contractor, a statement as to whether a qualified member of your staff (include name(s) and qualifications) will supervise or observe the capture. Accompany such statement with a copy of the proposed contract or a letter from the contractor indicating agreement to capture the animals, should a permit be granted;

(viii) In the case of imported animals, indicate, if known, the management and protection programs of the country from which the animal originates; and

(ix) For any marine mammal products to be imported, provide the information sought in this paragraph for all marine mammals from which com-

ponent parts of such products are derived.

(7) Describe the manner of transportation of any marine mammal taken or imported, including:

(i) Mode of transportation;
(ii) Name of transportation company;

(iii) Length of time in transit for the transfer of the animal(s) from the capture site to the research or display facility;

(iv) Length of time in transit for any future move or transfer of the animal(s) that is planned;

(v) The qualifications of the common carrier or agent used for transportation of the animals;

(vi) A description of the pen, container, cage, cradle, or other devices used, both to hold the animal at the capture site and during transportation;

(vii) Special care before and during transportation, such as salves, antibiotics, moisture; and

(viii) A statement as to whether the animals will be accompanied by a veterinarian or other similarly qualified person, and the qualifications of such person.

(8) Describe the contemplated care and maintenance of any mammals sought, including a complete description of the facilities where any such mammals will be maintained or displayed, including:

(i) The dimensions of the pools or other holding facilities and the number of animals by species to be held in each;

(ii) The water supply, amount, and quality;

(iii) The diet, amount and type, for all animals;

(iv) Sanitation practices used;

(v) Qualifications and experience of the staff; and

(vi) A written certification from a licensed veterinarian knowledgeable in the field of marine mammals that he has personally reviewed the arrangements for transporting and maintaining the animal(s) and that in his opinion they are adequate to provide for the wellbeing of the animal.

(9) If the application is for public display, provide a detailed description of the proposed display, including:

(i) A description of the manner, location, and number of times per day and per week the animal(s) will be displayed;

(ii) An indication as to whether the display is for profit;

(iii) An estimate of the numbers and types of people who it is estimated will benefit by such display;

(iv) A list of any educational or scientific programs connected to the contemplated display; and

(v) A description of the Applicant's enterprise and its connections with any governmental, educational, medical, or other scientific entities.

(10) If the marine mammal to be taken or imported is listed as an endangered species pursuant to the Endangered Species Act of 1969 or any Act superseding it, or has been designated by the Secretary as depleted, or if the marine mammal product to be imported is composed in whole or in part from such mammal, provide a detailed justification of the need for such mammal(s), or product(s) including a discussion of possible alternatives, whether or not under the control of the Applicant. Please note that pursuant to the Act and interim regulations that no public display permits may be issued for such endangered or depleted species.

(11) For the year preceding the date of this application, provide a detailed description of all marine mammal mortalities, including:

(i) A list of all marine mammals captured, transported, maintained, displayed, or utilized for scientific research and/or for all marine mammals caused to be captured, transported, maintained, displayed, or utilized for scientific research, by the Applicant.

(ii) The numbers of mortalities among such mammals, by species, by date and location of such mortalities;

(iii) The cause(s) of any such mortalities; and

(iv) The steps which have been taken by the Applicant to avoid or decrease any such mortalities.

(12) A certification in the following language:

I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I under-

stand that this information is submitted for the purpose of obtaining a permit under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407) and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties provided under the Marine Mammal Protection Act of 1972.

(13) The applicant must sign the application.

(b) Upon receipt of an application for a scientific research permit or a public display permit, the Secretary shall forward the application to the Marine Mammal Commission together with a request for the recommendations of the Commission and the Committee of Scientific Advisors on Marine Mammals on the permit application. In order to comply with the time limits provided in these regulations, the Secretary shall request that such recommendation be submitted within 30 days of receipt of the application by the Commission. If the Commission or the Committee, as the case may be, does not respond within 30 days from the receipt of such application by the Commission, the Secretary shall advise the Commission in writing that failure to respond within 45 days from original receipt of the application (or such longer time as the Secretary may establish) shall be considered as a recommendation from the Commission and the Committee that the permit be issued. The Secretary may also consult with any other person, institution or agency concerning the application.

(c) Except as provided in Subpart D of 15 CFR Part 904, permits applied for under this section shall be issued, suspended, modified and revoked pursuant to regulations contained in § 216.33. In determining whether to issue a scientific research permit, the Secretary shall, among other criteria, consider whether the proposed taking or importation will be consistent with the policies and purposes of the Act; and whether the granting of the permit is required to further a bona fide and necessary or desirable scientific purpose, taking into account the benefits anticipated to be derived from the scientific research contemplated and the effect of the proposed taking or importation on the population

stock and the marine ecosystem. In determining whether to issue a public display permit, the Secretary shall, among other criteria, consider whether the proposed taking or importation will be consistent with the policies and purposes of the Act; whether the marine mammal in question is from a species listed as depleted under § 216.15 of this part; whether a substantial public benefit will be gained from the display contemplated, taking into account the manner of the display and the anticipated audience on the one hand, and the effect of the proposed taking or importation on the population stocks of the marine mammal in question and the marine ecosystem on the other; and the applicant's qualifications for the proper care and maintenance of the marine mammal or the marine mammal product, and the adequacy of his facilities.

(d) Permits applied for under this section shall contain terms and conditions as the Secretary may deem appropriate, including

(1) The number and kind of marine mammals which are authorized to be taken or imported;

(2) The location and manner in which such marine mammals may be taken or from which they may be imported;

(3) The period during which the permit is valid;

(4) The methods of transportation, care and maintenance to be used with live marine mammals;

(5) Any requirements for reports or rights of inspections with respect to any activities carried out pursuant to the permit;

(6) The transferability or assignability of the permit;

(7) The sale or other disposition of the marine mammal, its progeny or the marine mammal product; and

(8) A reasonable fee covering the costs of issuance of such permit, including an appropriate apportionment of overhead and administrative expenses of the Department of Commerce.

(Approved by the Office of Management and Budget under control numbers 0648-0084 and 0648-0085)

[39 FR 1852, Jan. 15, 1974, as amended at 39 FR 14348, Apr. 23, 1974; 41 FR 30120, July 22, 1976; 48 FR 57302, Dec. 29, 1983; 49 FR 1042, Jan. 6, 1984]

§ 216.32 [Reserved]

§ 216.33 Procedures for issuance of permits and modification, suspension or revocation thereof.

(a) Whenever application for a permit is received by the Secretary which the Secretary deems sufficient, he shall, as soon as practicable, publish a notice thereof in the FEDERAL REGISTER. Such notice shall set forth a summary of the information contained in such application. Any interested party may, within 30 days after the date of publication of such notice, submit to the Secretary his written data or views with respect to the taking or importation proposed in such application and may request a hearing in connection with the action to be taken thereon.

(b) If a request for a hearing is made within the 30-day period referred to in paragraph (a) of this section, or if the Secretary determines that a hearing would otherwise be advisable, the Secretary may, within 60 days after the date of publication of the notice referred to in paragraph (a) of this section, afford to such requesting party or parties an opportunity for a hearing. Such hearing shall also be open to participation by any interested members of the public. Notice of the date, time, and place of such hearing shall be published in the FEDERAL REGISTER not less than 15 days in advance of such hearing. Any interested person may appear in person or through representatives at the hearing and may submit any relevant material, data, views, comments, arguments, or exhibits. A summary record of the hearing shall be kept.

(c) As soon as practicable but not later than 30 days after the close of the hearing (or if no hearing is held, as soon as practicable after the end of the 30 days succeeding publication of the notice referred to in paragraph (a) of this section) the Secretary shall issue or deny issuance of the permit. Notice of the decision of the Secretary shall be published in the FEDERAL REGISTER within 10 days after the date of

the issuance or denial and indicate where copies of the permit, if issued, may be obtained.

(d) Any permit shall be subject to modification, suspension, or revocation by the Secretary in whole or in part in accordance with these regulations and the terms of such permits. The permittee shall be given written notice by registered mail, return receipt requested, of any proposed modification, suspension, or revocation. Such notice shall specify:

(1) The action proposed to be taken along with a summary of the reasons therefore; and

(2) The steps which the Permittee may take to demonstrate or achieve compliance with all lawful requirements;

(3) Shall advise the permittee that he is entitled to a hearing thereon, if a written request for such a hearing is received by the Secretary within 10 days after receipt of the aforesaid notice or such other date as may be specified in the notice by the permittee. The time and place for the hearing, if requested by the permittee, shall be determined by the Secretary and written notice thereof given to the permittee by registered mail, return receipt requested, not less than 15 days prior to the date of hearing specified. The Secretary may, in his discretion, allow participation at the hearing by interested members of the public. The permittee and others participating may submit all relevant material, data, views, comments, arguments, and exhibits at the hearing. A summary record shall be kept of any such hearing.

(e) The Secretary shall make a decision regarding the proposed modification, suspension, or revocation, as soon as practicable after the close of the hearing, or if no hearing is held, as soon as practicable after the close of the 10-day period during which a hearing could have been requested. Notice of the modification, suspension, or revocation shall be published in the FEDERAL REGISTER within 10 days from the date of the Secretary's decision. In no event shall the proposed action take effect until notice of the Secretary's decision is published in the FEDERAL REGISTER.

§ 216.34

(Approved by the Office of Management and Budget under control numbers 0648-0084 and 0648-0085)

[39 FR 1852, Jan. 15, 1974, as amended at 48 FR 57302, Dec. 29, 1983]

§ 216.34 Possession of permits.

(a) Any permit issued under these regulations must be in the possession of the person to whom it is issued (or an agent of such person) during:

(1) The time of the authorized taking or importation;

(2) The period of any transit of such person or agent which is incident to such taking or importation; and

(3) Any other time while any marine mammal taken or imported under such permit is in the possession of such person or agent.

(b) A duplicate copy of the issued permit must be physically attached to the container, package, enclosure, or other means of containment, in which the marine mammal is placed for purposes of storage, transit, supervision, or care.

Subpart E—Designated Ports

§ 216.40 Importation at designated ports.

(a) Any marine mammal or marine mammal product which is subject to the jurisdiction of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce and is intended for importation into the United States shall be subject to the provisions of 50 CFR Part 14.

(b) For the information of importers, designated ports of entry for the United States are:

New York, N.Y.
Miami, Fla.
Chicago, Ill.
San Francisco, Calif.
Los Angeles, Calif.
New Orleans, La.
Seattle, Wash.
Honolulu, HI.

(c) Additionally, marine mammals or marine mammal products which are entered into Alaska, Hawaii, Puerto Rico, Guam, American Samoa or the Virgin Islands and which are not to be forwarded or transhipped within the United States may be imported through the following ports:

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Alaska—Juneau, Anchorage, Fairbanks
Hawaii—Honolulu
Puerto Rico—San Juan
Guam—Honolulu, HI.
American Samoa—Honolulu, HI.
Virgin Islands—San Juan, P.R.

(d) Importers are advised to see 50 CFR Part 14 for importation requirements and information.

Subpart F—[Reserved]

Subpart G—Notice and Hearing on Section 103 Regulations

Source: 40 FR 10183, Mar. 5, 1975, unless otherwise noted.

§ 216.70 Basis and purpose.

(a) Sections 101(a)(2), 101(a)(3)(A), and 101(b) 16 U.S.C. 1371(a)(2), 1371(a)(3)(A), 1371(b) (1972)) of the Act and these regulations authorize the Director, National Marine Fisheries Service, to (1) impose regulations governing the taking of marine mammals incidental to commercial fishing operations; (2) waive the moratorium and to adopt regulations with respect to the taking and importing of animals from each species of marine mammals under his jurisdiction; (3) prescribe regulations governing the taking of depleted marine mammals by any Indian, Aleut or Eskimo, respectively. In prescribing regulations to carry out the provisions of said sections, the Act refers the Director to section 103 (16 U.S.C. section 1373 (1972)). In accordance with section 103(d), regulations must be made on the record after opportunity for an agency hearing on such regulations and, in the case of a waiver, on the determination by the Director to waive the moratorium pursuant to section 101(a)(3)(A) (16 U.S.C. 1371(a)(3)(A) 1972)).

(b) The purpose of this subpart is to establish rules of practice and procedure for all hearings conducted pursuant to section 103(d).

§ 216.71 Definitions.

Definitions shall be the same as in Subpart A of this part except as follows:

(a) "Party" means, for the purposes of this subpart:

(1) The Director or his representative;

(2) A person who has notified the Director by specified dates of his or her intent to participate in the hearing pursuant to §§ 216.74 and 216.83(b).

(b) "Witness" means, for the purposes of this subpart, any person who submits written direct testimony on the proposed regulations.

A person may be both a party and a witness.

§ 216.72 Scope of regulations.

The procedural regulations in this subpart govern the practice and procedure in hearings held under section 103(d) of the Act. These hearings will be governed by the provisions of 5 U.S.C. section 556 and section 557 of the Administrative Procedure Act. The regulations shall be construed to secure the just, speedy, and inexpensive determination of all issues raised with respect to any waiver or regulation proposed pursuant to section 103(d) of the Act with full protection for the rights of all persons affected thereby.

§ 216.73 Notice of hearing.

(a) A notice of hearing on any proposed regulations shall be published in the FEDERAL REGISTER, together with the Director's proposed determination to waive the moratorium pursuant to section 101(a)(3)(A) (16 U.S.C. 1371(a)(3)(A)), where applicable.

(b) The notice shall state:

(1) The nature of the hearing;

(2) The place and date of the hearing. The date shall not be less than 60 days after publication of notice of the hearing;

(3) The legal authority under which the hearing is to be held;

(4) The proposed regulations and waiver, where applicable, and a summary of the statements required by section 103(d) of the Act (16 U.S.C. 1373(d));

(5) Issues of fact which may be involved in the hearing;

(6) If a draft Environmental Impact Statement is required, the date of publication of the draft and the place(s) where the draft and comments thereon may be viewed and copied;

(7) Any written advice received from the Marine Mammal Commission;

(8) The place(s) where records and submitted direct testimony will be kept for public inspection;

(9) The final date for filing with the Director a notice of intent to participate in the hearing pursuant to § 216.74;

(10) The final date for submission of direct testimony on the proposed regulations and waiver, if applicable, and the number of copies required;

(11) The docket number assigned to the case which shall be used in all subsequent proceedings; and

(12) The place and date of the prehearing conference.

§ 216.74 Notification by interested persons.

Any person desiring to participate as a party shall notify the Director, by certified mail, on or before the date specified in the notice.

§ 216.75 Presiding officer.

(a) Upon publication of the notice of hearing pursuant to § 216.73, the Director shall appoint a presiding officer pursuant to 5 U.S.C. 3105. No individual who has any conflict of interest, financial or otherwise, shall serve as presiding officer in such proceeding.

(b) The presiding officer, in any proceeding under this subpart, shall have power to:

(1) Change the time and place of the hearing and adjourn the hearing;

(2) Evaluate direct testimony submitted pursuant to these regulations, make a preliminary determination of the issues, conduct a prehearing conference to determine the issues for the hearing agenda, and cause to be published in the FEDERAL REGISTER a final hearing agenda;

(3) Rule upon motions, requests and admissibility of direct testimony;

(4) Administer oaths and affirmations, question witnesses and direct witnesses to testify;

(5) Modify or waive any rule (after notice) when determining no party will be prejudiced;

(6) Receive written comments and hear oral arguments;

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(7) Render a recommended decision; and

(8) Do all acts and take all measures, including regulation of media coverage, for the maintenance of order at and the efficient conduct of the proceeding.

(c) In case of the absence of the original presiding officer or his inability to act, the powers and duties to be performed by the original presiding officer under this part in connection with a proceeding may, without abatement of the proceeding, be assigned to any other presiding officer unless otherwise ordered by the Director.

(d) The presiding officer may upon his own motion withdraw as presiding officer in a proceeding if he deems himself to be disqualified.

(e) A presiding officer may be requested to withdraw at any time prior to the recommended decision. Upon the filing by an interested person in good faith of a timely and sufficient affidavit alleging the presiding officer's personal bias, malice, conflict of interest or other basis which might result in prejudice to a party, the hearing shall recess. The Director shall immediately determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as he may deem appropriate in the circumstances.

§ 216.76 Direct testimony submitted as written documents.

(a) Unless otherwise specified, all direct testimony, including accompanying exhibits, must be submitted to the presiding officer in writing no later than the dates specified in the notice of the hearing (§ 216.73), the final hearing agenda (§ 216.81), or within 15 days after the conclusion of the prehearing conference (§ 216.83) as the case may be. All direct testimony shall be in affidavit form and exhibits constituting part of such testimony, referred to in the affidavit and made a part thereof, must be attached to the affidavit. Direct testimony submitted with exhibits must state the issue to which the exhibit relates; if no such statement is made, the presiding officer shall determine the rel-

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evance of the exhibit to the issues published in the FEDERAL REGISTER.

(b) The direct testimony submitted shall contain:

(1) A concise statement of the witness' interest in the proceeding and his position regarding the issues presented. If the direct testimony is presented by a witness who is not a party, the witness shall state his relationship to the party; and

(2) Facts that are relevant and material.

(c) The direct testimony may propose issues of fact not defined in the notice of the hearing and the reason(s) why such issues should be considered at the hearing.

(d) Ten copies of all direct testimony must be submitted unless the notice of the hearing otherwise specifies.

(e) Upon receipt, direct testimony shall be assigned a number and stamped with that number and the docket number.

(f) Contemporaneous with the publication of the notice of hearing, the Director's direct testimony in support of the proposed regulations and waiver, where applicable, shall be available for public inspection as specified in the notice of hearing. The Director may submit additional direct testimony during the time periods allowed for submission of such testimony by witnesses.

§ 216.77 Mailing address.

Unless otherwise specified in the notice of hearing, all direct testimony shall be addressed to the Presiding Officer, c/o Director, National Marine Fisheries Service, Washington, DC 20235. All affidavits and exhibits shall be clearly marked with the docket number of the proceedings.

§ 216.78 Inspection and copying of documents.

Any document in a file pertaining to any hearing authorized by this subpart or any document forming part of the record of such a hearing may be inspected and/or copied in the Office of the Director, National Marine Fisheries Service, Washington, DC 20235—unless the file is in the care and custody of the presiding officer, in which

case he shall notify the parties as to where and when the record may be inspected.

§ 216.79 Ex parte communications.

(a) After notice of a hearing is published in the FEDERAL REGISTER, all communications, whether oral or written, involving any substantive or procedural issue and directed either to the presiding officer or to the Director, Deputy Director or Marine Mammal Coordinator, National Marine Fisheries Service, without reference to these rules of procedure, shall be deemed ex parte communications and are not to be considered part of the record for decision.

(b) A record of oral conversations shall be made by the above persons who are contacted. All communications shall be available for public viewing at the place(s) specified in the notice of hearing.

(c) The presiding officer shall not consult any person or party on any fact in issue or on the merits of the matter unless notice and opportunity is given for all parties to participate.

§ 216.80 Prehearing conference.

(a) After an examination of all the direct testimony submitted pursuant to § 216.76, the presiding officer shall make a preliminary determination of issues of fact which may be addressed at the hearing.

(b) The presiding officer's preliminary determination shall be made available at the place or places provided in the notice of the hearing (§ 216.73(b)(8)) at least five days before the prehearing conference is held.

(c) The purpose of the prehearing conference shall be to enable the presiding officer to determine, on the basis of the direct testimony submitted and prehearing discussions:

(1) Whether the presiding officer's preliminary determination of issues of fact for the hearing has omitted any significant issues;

(2) What facts are not in dispute;

(3) Which witnesses may appear at the hearing; and

(4) The nature of the interest of each party and which parties' interests are adverse.

(d) Only parties may participate in the prehearing conference and a party may appear in person or be represented by counsel.

(e) Parties who do not appear at the prehearing conference shall be bound by the conference's determinations.

§ 216.81 Final agenda of the hearing.

(a) After the prehearing conference, the presiding officer shall prepare a final agenda which shall be published in the FEDERAL REGISTER within ten days after the conclusion of the conference. A copy of the final agenda shall be mailed to all parties.

(b) The final agenda shall list: (1) All the issues which the hearing shall address, the order in which those issues shall be presented, and the direct testimony submitted which bears on the issues; and (2) a final date for submission of direct testimony on issues of fact not included in the notice of hearing if such issues are presented. The final agenda may also specify a final date for submission of direct testimony to rebut testimony previously submitted during the time specified in the notice of the hearing.

(c) The presiding officer shall publish with the final agenda a list of witnesses who may appear at the hearing, a list of parties, the nature of the interest of each party, and which parties' interests are adverse on the issues presented.

§ 216.82 Determination to cancel the hearing.

(a) If the presiding officer concludes that no issues of fact are presented by the direct testimony submitted, the presiding officer shall publish such conclusion and notice in the FEDERAL REGISTER that a hearing shall not be held and shall also publish a date for filing written comments on the proposed regulations. Written comments may include proposed findings and conclusions, arguments or briefs.

(b) A person need not be a party to submit any written comments.

(c) Promptly after expiration of the period for receiving written comments, the presiding officer shall make a recommended decision based on the record, which in this case shall consist

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of the direct testimony and written comments submitted. He shall transfer to the Director his recommended decision, the record and a certificate stating that the record contains all the written direct testimony and comments submitted. The Director shall then make a final decision in accordance with these regulations (§ 216.90).

§ 216.83 Rebuttal testimony and new issues of fact in final agenda.

(a) Direct testimony to rebut testimony offered during the time period specified in the notice of hearing may be submitted pursuant to these regulations within fifteen days after the conclusion of the prehearing conference unless the presiding officer otherwise specifies in the final agenda.

(b) If the final agenda presents issues not included in the notice of the hearing published pursuant to § 216.73:

(1) Any person interested in participating at the hearing on such issues presented shall notify the Director by certified mail of an intent to participate not later than ten days after publication of the final agenda. Such person may present direct testimony or cross-examine witnesses only on such issues presented unless he previously notified the Director pursuant to § 216.74; and

(2) Additional written direct testimony concerning such issues may be submitted within the time provided in the final agenda. Such direct testimony will comply with the requirements of § 216.76.

§ 216.84 Waiver of right to participate.

Persons who fail to notify the Director pursuant to § 216.74 and § 216.83 shall be deemed to have waived their right to participate as parties in any part of the hearing.

§ 216.85 Conduct of the hearing.

(a) The hearing shall be held at the time and place fixed in the notice of hearing, unless the presiding officer changes the time or place. If a change occurs, the presiding officer shall publish the change in the FEDERAL REGISTER and shall expeditiously notify all parties by telephone or by mail: *Provided*, That if the change in time or

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place of hearing is made less than five days before the date previously fixed for the hearing, the presiding officer shall also announce, or cause to be announced, the change at the time and place previously fixed for the hearing.

(b) The presiding officer shall, at the commencement of the hearing, introduce into the record: the notice of hearing as published in the FEDERAL REGISTER; all subsequent notices published in the FEDERAL REGISTER; the draft Environmental Impact Statement if it is required and the comments thereon and agency responses to the comments; and a list of all parties. Direct testimony shall then be received with respect to the matters specified in the final agenda in such order as the presiding officer shall announce. With respect to direct testimony submitted as rebuttal testimony or in response to new issues presented by the prehearing conference, the presiding officer shall determine the relevancy of such testimony.

(c) The hearing shall be publicly conducted and reported verbatim by an official reporter.

(d) If a party objects to the admission or rejection of any direct testimony or to any other ruling of the presiding officer during the hearing, he shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the presiding officer. The transcript shall not include argument or debate thereon except as ordered by the presiding officer. The ruling of the presiding officer on any objection shall be a part of the transcript and shall be subject to review at the same time and in the same manner as the Director's final decision. Only objections made before the presiding officer may subsequently be relied upon in the proceedings.

(e) All motions and requests shall be addressed to, and ruled on by, the presiding officer, if made prior to his certification of the transcript or by the Director if made thereafter.

§ 216.86 Direct testimony.

(a) Only direct testimony submitted by affidavit as provided in these regulations and introduced at the hearing

by a witness shall be considered part of the record. Such direct testimony shall not be read into evidence but shall become a part of the record subject to exclusion of irrelevant and immaterial parts thereof;

(b) The witness introducing direct testimony shall:

(1) State his name, address and occupation;

(2) State qualifications for introducing the direct testimony. If an expert, the witness shall briefly state the scientific or technical training which qualifies him as an expert;

(3) Identify the direct testimony previously submitted in accordance with these regulations; and

(4) Submit to appropriate cross and direct examination. Cross-examination shall be by a party whose interests are adverse on the issue presented, to the witness, if the witness is a party, or to the interests of the party who presented the witness.

(c) A party shall be deemed to have waived the right to introduce direct testimony if such party fails to present a witness to introduce the direct testimony.

(d) Official notice may be taken of such matters as are judicially noticed by the courts of the United States: *Provided*, That parties shall be given adequate notice, by the presiding officer, at the hearing, of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed.

§ 216.87 Cross-examination.

(a) The presiding officer may:

(1) Require the cross-examiner to outline the intended scope of the cross-examination;

(2) Prohibit parties from cross-examining witnesses unless the presiding officer has determined that the cross-examiner has an adverse interest on the facts at issue to the party-witness or the party presenting the witness. For the purposes of this subsection, the Director's or his representative's interest shall be considered adverse to all parties;

(3) Limit the number of times any party or parties having a common interest may cross-examine an "adverse" witness on the same matter; and

(4) Exclude cross-examination questions that are immaterial, irrelevant or unduly repetitious.

(b) Any party shall be given an opportunity to appear, either in person or through an authorized counsel or representative, to cross-examine witnesses. Before cross-examining a witness, the party or counsel shall state his name, address and occupation. If counsel cross-examines the witness, counsel shall state for the record the authority to act as counsel. Cross-examiners shall be assumed to be familiar with the direct testimony.

(c) Any party or party's counsel who fails to appear at the hearing to cross-examine an "adverse" witness shall be deemed to have waived the right to cross-examine that witness.

(d) Scientific, technical or commercial publications may only be utilized for the limited purposes of impeaching witnesses under cross-examination unless previously submitted and introduced in accordance with these regulations.

§ 216.88 Oral and written arguments.

(a) The presiding officer may, in his discretion, provide for oral argument at the end of the hearing. Such argument when permitted, may be limited by the presiding officer to the extent necessary for the expeditious disposition of the proceeding.

(b) The presiding officer shall announce at the hearing a reasonable period of time within which any interested person may file with the presiding officer any written comments on the proposed regulations and waiver, including proposed findings and conclusions and written arguments or briefs, which are based upon the record and citing where practicable the relevant page or pages of the transcript. If a party filing a brief desires the presiding officer to reconsider any objection made by such party to a ruling of the presiding officer, he shall specifically identify such rulings by reference to the pertinent pages of the transcript and shall state his arguments thereon as a part of the brief.

(c) Oral or written arguments shall be limited to issues arising from direct testimony on the record.

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§ 216.89 Recommended decision, certification of the transcript and submission of comments on the recommended decision.

(a) Promptly after expiration of the period for receiving written briefs, the presiding officer shall make a recommended decision based on the record and transmit the decision to the Director. The recommended decision shall include:

- (1) A statement containing a description of the history of the proceedings;
- (2) Findings on the issues of fact with the reasons therefor; and
- (3) Rulings on issues of law.

(b) The presiding officer shall also transmit to the Director the transcript of the hearing, the original and all copies of the direct testimony, and written comments. The presiding officer shall attach to the original transcript of the hearing a certificate stating that, to the best of his knowledge and belief, the transcript is a true transcript of the testimony given at the hearing except in such particulars as are specified.

(c) Immediately after receipt of the recommended decision, the Director shall give notice thereof in the **FEDERAL REGISTER**, send copies of the recommended decision to all parties, and provide opportunity for the submission of comments. The recommended decision may be reviewed and/or copied in the office of the Director, National Marine Fisheries Service, Washington, DC 20235.

(d) Within twenty days after the notice of receipt of the recommended decision has been published in the **FEDERAL REGISTER**, any interested person may file with the Director any written comments on the recommended decision. All comments, including recommendations from or consultation with the Marine Mammal Commission, must be submitted during the twenty-day period to the Director at the above address.

§ 216.90 Director's decision.

(a) Upon receipt of the recommended decision and transcript and after the twenty-day period for receiving written comments on the recommended decision has passed, the Director shall make a final decision on the pro-

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posed regulations and waiver, where applicable. The Director's decision may affirm, modify, or set aside, in whole or in part, the recommended findings, conclusions and decision of the presiding officer. The Director may also remand the hearing record to the presiding officer for a fuller development of the record.

(b) The Director's decision shall include:

- (1) A statement containing a description of the history of the proceeding;
- (2) Findings on the issues of fact with the reasons therefor; and
- (3) Rulings on issues of law.

(c) The Director's decision shall be published in the **FEDERAL REGISTER**. If the waiver is approved, the final adopted regulations shall be promulgated with the decision.

Subpart H—Transfer of Management Authority to States

NOTE: Regulations governing the transfer of management authority to States pursuant to section 109 of the Marine Mammal Protection Act for marine mammal species under the jurisdiction of the Secretary of Commerce are found at Part 403 of this title, see 48 FR 22456, May 18, 1983.

Subpart I—Waiver of the Moratorium on Taking of Marine Mammals

AUTHORITY: Secs. 103 and 109 of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1373 and 1379).

SOURCE: 44 FR 2553, Jan. 11, 1979, unless otherwise noted.

EFFECTIVE DATE NOTE: At 44 FR 2553, Jan. 11, 1979, Subpart I was added to Part 216, effective when the Administrator determines (in accordance with section 109(a)(2) of the Marine Mammal Protection Act of 1972, and 50 CFR Part 216, Subpart H) that Alaskan laws and regulations are consistent with the Act.

§ 216.110 Purpose of regulations.

Pursuant to section 103 of the Act, the regulations contained in this subpart insure that the taking of each species or population stock of marine mammal for which the moratorium imposed by section 101 of the Act has been waived will not be to the disad-

vantage of any species or population stock.

§ 216.111 Scope.

(a) The provisions of this subpart apply with respect to each species or population stock only after (1) the Administrator has made a decision to effect a waiver and allow taking such species or population stocks pursuant to section 101(a)(3)(A) of the Act; and (2) a State has adopted and submitted to the Administrator laws and regulations relating to the protection and taking of such species and population stocks and the Administrator has approved such State laws and regulations pursuant to section 109(a)(2) of the Act and Subpart H of this part.

(b) The provisions of this subpart, unless specifically stated otherwise, apply to all taking of marine mammals by U.S. citizens and residents in Alaska and the waters off Alaska.

(c) The provisions of this subpart do not apply to nonlethal scientific research or public display, which shall be permitted in accordance with § 216.31, and incidental taking by foreign persons or foreign vessels, which shall be permitted in accordance with § 216.24.

§ 216.112 Definitions.

For purposes of this part:

(a) "Alaska" means all lands and waters within the seaward boundary of the State of Alaska;

(b) "Foreign person" means any person who is not a U.S. citizen or resident; "foreign vessel" means any vessel other than a vessel documented or certificated under U.S. laws.

(c) "Lethal scientific research" means scientific research in which the subject mammal is killed or seriously injured.

(d) "Pup" refers to a marine mammal which is born in the year in which it is taken in a commercial harvest.

(e) The term "Waters off Alaska" means waters outside Alaska and west of longitude 130° W., north of latitude 50° N., east of the U.S.-Russia Convention Line of 1867, and south of latitude 75° N.

§ 216.113 Taking of seals, sea lions and Beluga Whales (Alaska).

(a) Pursuant to section 101(a)(3)(A), 103 and 109 of the Act, and subject to the terms and conditions of this section, the moratorium and other requirements of section 101(a) of the Act are waived to allow the kinds of taking described in § 216.111(b) up to the following amounts on an annual, calendar year basis effective with the publication of the notice of approval of the laws and regulations of the State of Alaska pursuant to § 216.104(d).

Species	Annual taking limit on mortality and serious injury
Northern (Steller), Sea Lion (<i>Eumetopias jubatus</i>).....	16,648
Harbor Seal (<i>Phoca vitulina</i>).....	10,511
Largha Seal (<i>Phoca largha</i>).....	5,700
Ribbon Seal (<i>Histiophoca vealei</i>).....	500
Ringed Seal (<i>Pusa hispida</i>).....	20,000
Pacific Bearded Seal (<i>Erignathus barbatus</i>).....	9,000
Beluga Whale (<i>Delphinapterus leucas</i>).....	10
Cook Inlet stock, Spring-Chukchi Sea stock.....	350

¹ Two (2) pups may be taken in lieu of one adult, but only in commercial harvests and in accordance with age restrictions established by the State of Alaska. In accordance with 50 CFR 216.112(d), the State can allow only animals born in the year in which they are taken to qualify as pups.

² To be measured by the landing and taking ashore of 3,000 animals.

(b) The State of Alaska must insure that for each species and population stock, no more than the number of animals set forth in paragraph (a) of this section are taken annually.

(c) All takings of marine mammals allowed by § 216.111(b) and § 216.113(a) and all related activities shall be conducted in accordance with the applicable laws and regulations of the State of Alaska and the United States.

(d) The takings of marine mammals allowed by §§ 216.111(b) and 216.113(a) shall be duly licensed or otherwise authorized in writing as follows:

(1) *Alaska citizens and residents (including resident aliens)*. All subsistence, direct, incidental, and lethal scientific research taking in Alaska and the waters of Alaska shall be permitted in accordance with laws and regulations established by the State of Alaska;

(2) *Non-Alaskan-U.S. citizens, residents, and resident aliens.* (i) All direct and incidental taking, and lethal scientific research in Alaska shall be permitted in accordance with laws and regulations established by the State of Alaska; (ii) if such takings occur in the waters off Alaska, they shall be permitted in accordance with the laws and regulations of the United States.

(3) With respect to all permit applications for taking in the waters off Alaska under paragraph (d)(2)(ii) of this section, the Assistant Administrator for Fisheries, NOAA, shall consult with appropriate officials of the State of Alaska prior to issuing any permits.

(4) The State of Alaska shall consult with the Assistant Administrator for Fisheries, NOAA, prior to issuing any lethal scientific research permits under paragraphs (d)(1) and (d)(2) of this section.

(e) Whenever the taking of any species or population stock during any calendar year reaches, or is likely to reach 90 percent of the annual taking limit under paragraph (a) of this section, the Administrator shall be notified pursuant to § 216.107. After notification, the State of Alaska must take appropriate steps to insure that the annual waiver limit is not exceeded, including, if necessary, an immediate termination of any taking under its control. If the State of Alaska does not take such appropriate steps, the Administrator as he deems appropriate, by notice to the State of Alaska and publication in the FEDERAL REGISTER, shall suspend and terminate any takings authorized by the State of Alaska for the calendar year in question.

(f) Whenever any species or population stock diminishes or is likely to diminish below its optimum sustainable population, or if the State of Alaska does not preserve the purposes and policies of the Act, or maintain optimum sustainable population and a healthy ecosystem, the Administrator shall by notice to the State of Alaska and publication in the FEDERAL REGISTER reimpose the moratorium on the taking of such affected species or population stock provided by section 101(a) of the Act.

(g) No marine mammal or product thereof taken under this section may be removed from Alaska or the waters off Alaska unless it is marked, tagged, or otherwise identified as required by State law or regulation and such mark, tag, or other identification remains on the part or product or container until the final stages of processing.

(h) For those persons or vessels subject to Alaskan jurisdiction, any violation of the laws and regulation of the State of Alaska applicable to the taking of marine mammals, committed in the waters off Alaska, shall be a violation of 50 CFR Part 216, Subpart I. For those persons or vessels not subject to the jurisdiction of the State, any violation of these regulations in Alaska and the waters off Alaska may be punished in accordance with the procedures and penalties of sections 105, 106, and 107 of the Act and the regulations in this part.

(i) In accordance with paragraph (d)(2)(ii) of this section, the Administrator, after consultation with the State of Alaska, may issue permits to non-Alaskan, U.S. citizens authorizing the taking of any marine mammal listed in this section in the waters off Alaska. Applications for permits shall include:

- (1) Name and address of applicant;
- (2) Month and year of taking;
- (3) Identity of the marine mammal and the quantity to be taken;
- (4) Proposed location of taking;
- (5) Method of taking;
- (6) Proposed disposition of parts and products and method of shipment;
- (7) The following certification:

I hereby certify that the foregoing information is complete, true and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining the benefits of a permit under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407) and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001 or to penalties under the Marine Mammal Protection Act of 1972.

and

- (8) Signature of the applicant;
- (j) Permits applied for under paragraph (i) of this section shall be terminated by reimposition of the moratori-

um or any closure of a season by the State of Alaska.

(k) Permits issued under paragraph (i) of this section shall contain such terms and conditions as the Administrator may deem appropriate to ensure that any taking and subsequent disposition shall be in accordance with the Act, with these regulations, and with the applicable provisions of Alaska's approved laws and regulations and shall include:

(1) The number of animals which are authorized to be taken;

(2) The location from which they may be taken;

(3) The method of taking;

(4) The period during which the permit is valid, which period shall be subject to reimposition of the moratorium, or any closure of a season by the State of Alaska;

(5) Any requirements for reports or rights of inspection with respect to any activities carried out pursuant to the permit;

(6) The conditions of sale or other disposition of any parts or products including any marking requirements; and

(7) A reasonable fee covering the cost of issuance of such permit, including an appropriate apportionment of overhead and administrative expenses of the Department of Commerce. In no event will the cost be less than the fee for the comparable non-resident license or permit issued by the State of Alaska.

APPENDIX—TAKING OF MARINE MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATION; EXPEDITED PROCEDURES FOR CONSIDERATION OF PROPOSED QUOTAS AND AMENDED REGULATIONS

1. *Basis and purpose.* (a) Sections 101(a)(2) and 103(e) of the Marine Mammal Protection Act, 16 U.S.C. 1317(a)(2) and 1373(e), and these regulations authorize the Director, National Marine Fisheries Service, to amend regulations governing the taking of marine mammals incidental to commercial fishing operations. In amending regulations, the Act refers the Director to section 103(e) (16 U.S.C. 1373(e)).

(b) The purpose of these regulations is to establish rules of practice and procedure for proceedings commenced under section

103(e) on or about August 1, 1977 concerning the amendment of regulations and quotas on the taking of marine mammals incidental to commercial fishing operations.

2. *Definitions.* Definitions shall be the same as in 50 CFR 216.3 except as follows:

(a) "Party" means for purposes of these regulations:

(1) The Director or his representative;

(2) The Marine Mammal Commission or its representative;

(3) A person who has, pursuant to paragraph 5, notified the Director by the final date specified in the notice of hearing of his or her intent to participate in the hearing.

(b)(1) "Witness" means, for the purposes of these regulations, any expert or other person who delivers testimonial evidence, or who identifies real or documentary evidence under paragraphs 11 (d) and (e). A person may be both a party and a witness.

(2) "Expert" means one possessing knowledge not acquired by ordinary persons, with reference to a particular subject.

(c) "Director" means, for the purposes of these regulations, the Director of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

3. *Scope of regulations.* These procedural regulations govern the practice and procedure in hearings described in paragraph 1(b). These hearings will be governed by the provisions of 5 U.S.C. 556 and 557 of the Administrative Procedure Act. They shall be construed to secure the just, speedy, and inexpensive determination of all issues raised with respect to amending the regulations governing the taking of marine mammals incidental to commercial fishing operations pursuant to section 103(e) of the Act, with full protection for the rights of all persons affected thereby.

4. *Notice of hearing.* (a) A notice of hearing on any proposed regulations on the taking of marine mammals incidental to commercial fishing operations shall be published in the FEDERAL REGISTER.

(b) The notice shall state:

(1) The Director's intention to amend regulations on the taking of marine mammals incidental to commercial fishing operations under section 103(e) of the Act;

(2) The nature of the hearing;

(3) The place and date of the hearing. The date shall not be less than thirty (30) days after publication of notice of the hearing;

(4) The legal authority under which the hearing will be held;

(5) The proposed regulations;

(6) A summary of the statements and studies described in section 103(d) (1) through (4) of the Act. The notice shall indicate that these statements and studies have been published in full and made available to the public, and shall set forth the ways in which individual persons may have

copies of these statements and studies placed at their disposal;

(7) Issues of fact which may be involved in the hearing, together with the express statement that the hearing will not necessarily be limited to these issues and that evidence relevant to other issues may be submitted at the hearing, subject to rulings of the presiding officer on the materiality of such issues;

(8) The date of publication of any draft Environmental Impact Statement, and the place(s) where the draft and comments thereon may be viewed and copied;

(9) Any written advice received from the Marine Mammal Commission;

(10) The place(s) where records and documents submitted prior to the hearing will be kept for public inspection;

(11) A list of employees of the United States who will or may reasonably be expected to be involved in the decisional process on the regulations, including the Director and Deputy Director, to whom and by whom *ex parte* communications relevant to the merits of the proceeding by or to parties to the proceeding are prohibited under the provisions of section 4 of the Government in the Sunshine Act of 1976, Pub. L. 94-409;

(12) The final date for filing with the Director a notice of intent to participate in the hearing pursuant to paragraph 5;

(13) The docket number assigned to the case which shall be used in all subsequent proceedings;

(14) The name of the presiding officer;

(15) The final date for submission of direct expert testimony.

5. *Notification by interested persons.* Any person desiring to participate as a party shall notify the Director by certified mail on or before the date specified in the notice. Persons who fail to notify the Director shall be deemed to have waived their right to participate as parties in any part of the proceeding.

6. *Presiding officer.* (a) Upon publication of the notice of hearing pursuant to paragraph 4, the Director shall appoint a presiding officer pursuant to 5 U.S.C. 3105. No individual who has any conflict of interest, financial or otherwise, shall serve as presiding officer in such proceeding.

(b) The presiding officer, in any proceeding under this subpart, shall have power to:

(1) Adjourn the hearing, but not to change the time and place of the hearing specified in the notice of hearing without the consent of all parties;

(2) Rule upon motions, requests, and admissibility of real documentary, and testimonial evidence;

(3) Administer oaths and affirmations, question witnesses, and direct witnesses to testify;

(4) Modify or waive any rule with consent of all parties;

(5) Receive written arguments, comments, and briefs and hear oral argument;

(6) Render a recommended decision and certify the record of the proceeding to the Director;

(7) Do all acts and take all measures, including regulation of media coverage, for the maintenance of order at and the efficient conduct of the proceeding.

(c) In case of the absence of the original presiding officer or his inability to act, the power and duties to be performed by the original presiding officer under this part in connection with a proceeding may, without abatement of the proceeding, be assigned to any other presiding officer as ordered by the Director.

(d) The presiding officer may upon his own motion withdraw as presiding officer in a proceeding if he deems himself to be disqualified.

(e) A presiding officer may be requested to withdraw at any time by a party prior to the recommended decision. Upon the filing in good faith of a timely and sufficient affidavit alleging the presiding officer's personal bias, malice, conflict of interest of other basis which might result in prejudice to a party, the hearing shall recess. The Director shall immediately determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both as he may deem appropriate.

7. *Submission of evidence before the start of the hearing.* (a) All direct testimony of experts, including accompanying exhibits, must be submitted to the presiding officer and all parties in writing no later than the date specified in the notice of the hearing (section 4). Such testimony need not be in affidavit form. Direct testimony by other witnesses and real and documentary evidence is encouraged, but is not required to be submitted before the start of the hearing.

(b) The direct testimony submitted shall contain:

(1) A concise statement of the witness' interest in the proceeding and his position regarding the issues presented. If the direct testimony is presented by a witness who is not a party, the witness shall state his relationship to the party;

(2) Facts that are relevant and material.

(c) Seven copies of all direct expert testimony must be submitted to the National Marine Fisheries at the address listed in Section 8.

(d) No objections or motions concerning the relevance of evidence submitted prior to the hearing or the materiality of the issue to which it relates shall be entertained by the presiding officer before such evidence is introduced into the record at the hearing.

8. *Mailing address.* Unless otherwise specified in the notice of hearing, all evidence shall be addressed to the Presiding officer, c/o Director, National Marine Fisheries Service, Washington, DC 20235. Each item of real and documentary evidence and all written direct testimony shall be clearly marked with the docket number of the proceedings.

9. *Inspection and copying of evidence and other documents forming part of the record of the hearing.* Any evidence submitted by the parties at any point in a proceeding under these regulations may be inspected and, to the extent feasible, copied at such times and places as the presiding officer may designate. Other documents forming part of the record of the proceeding shall be made available for inspection and copying on the same basis. Any such documents not in the custody of the presiding officer may be inspected and copied in Room 408, National Marine Fisheries Service, Page Building No. 2, 3300 Whitehaven Street, N.W., Washington, DC 20235.

10. *Ex parte communications.* The provisions of section 4 of the Government in the Sunshine Act of 1976, Pub. L. 94-409, shall be adhered to in any proceeding conducted under these regulations.

11. *Conduct of the hearing.* (a) The hearing shall be held at the time and place fixed in the notice of hearing, unless the presiding officer, with the consent of all parties, changes the time or place. If a change occurs, the presiding officer shall publish the change in the FEDERAL REGISTER and shall expeditiously notify all parties by telephone or by mail. But if the change in time or place of hearing is made less than five days before the date previously fixed for the hearing, the presiding officer shall also announce or cause to be announced, the change at the time and place previously fixed for the hearing.

(b) At the commencement of the hearing, the presiding officer shall introduce into the record:

(1) The notice of hearing and the proposed regulations as published in the FEDERAL REGISTER;

(2) All subsequent notices pertaining to the proceeding published in the FEDERAL REGISTER;

(3) The draft Environmental Impact Statement, the comments thereon, and agency responses to the comments. If additional comments and agency responses are made at any later point in the proceeding, they shall be introduced into the record after notice to all parties by the presiding officer until he certifies the record to the Director, and thereafter by the Director;

(4) A list of all parties;

(c) Each party shall have the opportunity to introduce evidence into the record at the hearing in the order determined by the pre-

siding officer, but the Director shall introduce his evidence before any other party.

(d)(1) Testimonial evidence of experts shall be presented through their written statements after such experts are placed under oath. Such direct testimony shall not be read into evidence but shall become a part of the record subject to exclusion of irrelevant and immaterial parts thereof. The presiding officer in his discretion, may allow a limited period for oral statements on direct evidence to explain parts of an expert's written statement or to discuss matters not mentioned in such statement.

(2) Testimonial evidence of lay witnesses may be presented either by written or oral statements. The presiding officer may, in his discretion, limit the length of such testimony.

(3) The presiding officer may directly examine a witness under oath, and may propound to the witness questions submitted by parties other than the party that called the witness which he determines to be suitable for direct examination.

(e) Real and documentary evidence shall be admitted into the record only if the party introducing it or another person called by the party as a witness identifies such evidence, the issue to which it relates, the introducing party's position regarding that issue, and the manner in which the evidence supports that position. This identification shall be made under oath, and shall be required whether or not such real or documentary evidence was submitted to the presiding officer prior to the hearing under paragraph 7.

(f) Any witness by whom a party introduces testimonial evidence or identifies real or documentary evidence shall:

(1) State his or her name, address, and occupation;

(2) State qualifications for delivering or identifying such evidence. If an expert, the witness shall briefly state the scientific or technical training by which he or she qualifies as an expert;

(3) Submit to appropriate cross-examination in accordance with paragraph (g).

(g) Each party shall have the opportunity, in the order determined by the presiding officer, to cross-examine any witness by whom another party has introduced testimonial evidence; and to cross-examine any other party, as well as any identifying witness, about real and documentary evidence which such other party has introduced. Such cross-examination may be conducted by a party either in person or by an authorized counsel or representative. Cross-examiners shall be assumed to be familiar with all testimony previously delivered by the witness at the hearing. The Presiding Officer may:

(1) Require the cross-examiner to outline the intended scope of the cross-examination;

(2) Limit the number of times any party or parties may cross-examine a party or other witness on the same matter;

(3) Exclude cross-examination questions that are irrelevant, concern immaterial issues, or are unduly repetitious.

(h) Scientific, technical, or commercial publications may only be used for impeaching witnesses under cross-examination unless previously introduced as evidence in accordance with these regulations.

(i) The first time counsel conducts the direct or cross-examination of a party or other witness, such counsel shall state for the record his or her authority to act as counsel and the party granting that authority. A party shall be assumed to have waived the right to introduce evidence if such party fails to produce a witness to present or identify such evidence under oath. Any party or party's counsel who fails to appear at the hearing to cross-examine a witness shall be assumed to have waived the right to cross-examine that witness.

(j) The hearing shall be publicly conducted and reported verbatim by an official reporter.

(k) If a party objects to the admission or rejection of any evidence or to any other ruling of the presiding officer during the hearing, he shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the presiding officer. The ruling of the presiding officer on any objection shall be part of the record and shall be subject to review at the same time and in the same manner as the Director's final decision. Only objections made before the presiding officer may subsequently be relied upon in the proceedings.

(l) All motions and requests shall be addressed to, and ruled on by, the presiding officer if made before his certification of the record, and by the Director if made thereafter.

12. *Admissible evidence; official notice.* (a) Any evidence introduced by a party in accordance with these regulations shall be admitted into the record unless the presiding officer determines that such evidence is irrelevant to any material issue in the proceeding, or that it is unduly repetitious.

(b) Official notice may be taken of such matters as are judicially noticed by the courts of the United States.

13. *Oral and written arguments.* (a) For a period of fifteen (15) days after the close of presentation of evidence, any party may file with the presiding officer any written comments on the proposed regulations, including proposed finding and conclusions and written arguments or briefs which are based on the record and which cite, if practicable,

the relevant page or pages of the transcript. If a party filing a brief desires the presiding officer to reconsider any objection made by the presiding officer, that party shall state its arguments thereon as part of the brief. Immediately thereafter, each party shall be allowed five (5) days to file with the presiding officer reply briefs.

(b) The presiding officer shall provide for oral argument immediately following the period allowed for briefs. Such argument may be limited by the presiding officer to the extent necessary for the expeditious disposition of the proceeding. The presiding officer shall close the hearing immediately after the last oral argument.

(c) Oral or written arguments shall be limited to issues arising from evidence in the record.

14. *Recommended decision; certification of the record.* (a) Within twenty-four (24) days after the close of the hearing, the presiding officer shall make a recommended decision based on the record and transmit the decision to the Director. The recommended decision shall include:

(1) A description of the history of the proceedings;

(2) Findings on the issues of fact with reasons therefor; and

(3) Rulings on issues of law with the reasons therefor.

Copies of the recommended decision shall be sent to all parties after the close of the hearing.

(b) The presiding officer shall also transmit to the Director the entire record of the proceeding, accompanied by the presiding officer's certificate stating that, to the best of his knowledge and belief, the record is a complete and accurate compilation of all the evidence and other documents in the proceeding, except in such particulars as are specified.

(c) The recommended decision may be reviewed and copied in Room 408, National Marine Fisheries Service, Page Building No. 2, 3300 Whitehaven Street NW., Washington, DC 20235.

(d) Following submission of the recommended decision and the hearing record, each party shall be allowed five (5) days to file exceptions to the recommended decision with the Director. Thereafter, each party will have five days to file reply exceptions with the Director.

15. *Director's decision.* (a) Following the period allowed for exceptions, the Director shall make a final decision on the proposed regulations. The Director's decision may affirm, modify, or set aside in whole or in part the recommended findings, conclusions, and decision of the presiding officer. The Director may also remand the hearing

record to the presiding officer for a fuller development of the record.

(b) The Director's decision shall include:

(1) A description of the history of the proceeding;

(2) Findings on the issues of fact with the reasons therefor; and

(3) Rulings on issues of law, with the reasons therefor.

(c) The Director's decision, together with the final adopted regulations, shall be published in the FEDERAL REGISTER.

16. *Effective date.* These regulations become effective on July 12, 1977 and shall terminate on the date of publication in the FEDERAL REGISTER of the NMFS Director's final decision.

(Sec. 101(a)(2) and 103(e) of the Marine Mammal Protection Act, 16 U.S.C. 1317(a)(2) and 1373(e))

[42 FR 35987, July 13, 1977]

3. Endangered Species

Endangered Species Act of 1973*

* Pub. L. 93-205, 87 Stat. 884; 16 U.S.C. §668dd, 1531-43 (1976).



Public Law 93-205
93rd Congress, S. 1983
December 28, 1973

An Act

87 STAT. 884

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Endangered Species Act of 1973".

Endangered
Species Act
of 1973.

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FINDINGS, PURPOSES, AND POLICY

SEC. 2. (a) FINDINGS.--The Congress finds and declares that—

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

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

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

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

(A) migratory bird treaties with Canada and Mexico;

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

(C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere; 56 Stat. 1354.

(D) the International Convention for the Northwest Atlantic Fisheries; 1 UST 477.

(E) the International Convention for the High Seas Fisheries of the North Pacific Ocean; 4 UST 380.

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

(G) other international agreements.

(5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the

Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish and wildlife.

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

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

DEFINITIONS

Sec. 3. For the purposes of this Act—

(1) The term "commercial activity" means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling.

(2) The terms "conserve", "conserving", and "conservation" mean to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

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

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

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

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

- (A) between persons within one foreign country;
- (B) between persons in two or more foreign countries;
- (C) between a person within the United States and a person in a foreign country; or
- (D) between persons within the United States, where the fish and wildlife in question are moving in any country or countries outside the United States.

(7) The term "import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any

place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(8) The term "person" means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

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

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

84 Stat. 2090,
5 USC app.

(11) The term "species" includes any subspecies of fish or wildlife or plants and any other group of fish or wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature.

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

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

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

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

(16) The term "United States", when used in a geographical context, includes all States.

DETERMINATION OF ENDANGERED SPECIES AND THREATENED SPECIES

SEC. 4. (a) GENERAL.—(1) The Secretary shall by regulation determine whether any species is an endangered species or a threatened species because of any of the following factors:

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

(2) overutilization for commercial, sporting, scientific, or educational purposes;

(3) disease or predation;

(4) the inadequacy of existing regulatory mechanisms; or

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

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

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

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

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

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

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

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

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

(b) BASIS FOR DETERMINATIONS.—(1) The Secretary shall make determinations required by subsection (a) of this section on the basis of the best scientific and commercial data available to him and after consultation, as appropriate, with the affected States, interested persons and organizations, other interested Federal agencies, and, in cooperation with the Secretary of State, with the country or countries in which the species concerned is normally found or whose citizens harvest such species on the high seas; except that in any case in which such determinations involve resident species of fish or wildlife, the Secretary of the Interior may not add such species to, or remove such species from, any list published pursuant to subsection (c) of this section, unless the Secretary has first—

(A) published notice in the Federal Register and notified the Governor of each State within which such species is then known to occur that such action is contemplated;

(B) allowed each such State 90 days after notification to submit its comments and recommendations, except to the extent that such period may be shortened by agreement between the Secretary and the Governor or Governors concerned; and

(C) published in the Federal Register a summary of all comments and recommendations received by him which relate to such proposed action.

(2) In determining whether or not any species is an endangered species or a threatened species, the Secretary shall take into consideration those efforts, if any, being made by any nation or any political subdivision of any nation to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under the jurisdiction of any such nation or political subdivision, or on the high seas.

(3) Species which have been designated as requiring protection from unrestricted commerce by any foreign country, or pursuant to any international agreement, shall receive full consideration by the Secretary to determine whether each is an endangered species or a threatened species.

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

Notice, publication in Federal Register.

Publication in Federal Register.

(2) The Secretary shall, upon the petition of an interested person under subsection 553(e) of title 5, United States Code, conduct a review of any listed or unlisted species proposed to be removed from or added to either of the lists published pursuant to paragraph (1) of this subsection, but only if he makes and publishes a finding that such person has presented substantial evidence which in his judgment warrants such a review.

Review,
80 Stat. 383.

(3) Any list in effect on the day before the date of the enactment of this Act of species of fish or wildlife determined by the Secretary of the Interior, pursuant to the Endangered Species Conservation Act of 1969, to be threatened with extinction shall be republished to conform to the classification for endangered species or threatened species, as the case may be, provided for in this Act, but until such republication, any such species so listed shall be deemed an endangered species within the meaning of this Act. The republication of any species pursuant to this paragraph shall not require public hearing or comment under section 553 of title 5, United States Code.

80 Stat. 926;
83 Stat. 275,
283.
16 USC 668aa
note.

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

Post, p. 893.

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

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

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

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

(f) REGULATIONS.—(1) Except as provided in paragraphs (2) and (3) of this subsection and subsection (b) of this section, the provisions of section 553 of title 5, United States Code (relating to rule-making procedures), shall apply to any regulation promulgated to carry out the purposes of this Act.

(2) (A) In the case of any regulation proposed by the Secretary to carry out the purposes of this Act—

(i) the Secretary shall publish general notice of the proposed regulation (including the complete text of the regulation) in the Federal Register not less than 60 days before the effective date of the regulation; and

Notice, publication in Federal Register.

(ii) if any person who feels that he may be adversely affected by the proposed regulation files (within 45 days after the date of publication of general notice) objections thereto and requests a public hearing thereon, the Secretary may grant such request, but shall, if he denies such request, publish his reasons therefor in the Federal Register.

Hearing request.

Publication in Federal Register.

87 STAT. 889

80 Stat. 383. (B) Neither subparagraph (A) of this paragraph nor section 553 of title 5, United States Code, shall apply in the case of any of the following regulations and any such regulation shall, at the discretion of the Secretary, take effect immediately upon publication of the regulation in the Federal Register:

80 Stat. 926; 83 Stat. 275; 283. (i) Any regulation appropriate to carry out the purposes of this Act which was originally promulgated to carry out the Endangered Species Conservation Act of 1969.

16 USC 658aa note. (ii) Any regulation (including any regulation implementing section 6(g)(2)(B)(ii) of this Act) issued by the Secretary in regard to any emergency posing a significant risk to the well-being of any species of fish or wildlife, but only if (I) at the time of publication of the regulation in the Federal Register the Secretary publishes therein detailed reasons why such regulation is necessary, and (II) in the case such regulation applies to resident species of fish and wildlife, the requirements of subsection (b) (A), (B), and (C) of this section have been complied with. Any regulation promulgated under the authority of this clause (ii) shall cease to have force and effect at the close of the 120-day period following the date of publication unless, during such 120-day period, the rulemaking procedures which would apply to such regulation without regard to this subparagraph are complied with.

Statement by the Secretary. (3) The publication in the Federal Register of any proposed or final regulation which is necessary or appropriate to carry out the purposes of this Act shall include a statement by the Secretary of the facts on which such regulation is based and the relationship of such facts to such regulation.

LAND ACQUISITION

SEC. 5. (a) PROGRAM.—The Secretary of the Interior shall establish and implement a program to conserve (A) fish or wildlife which are listed as endangered species or threatened species pursuant to section 4 of this Act; or (B) plants which are concluded in Appendices to the Convention. To carry out such program, he—

70 Stat. 1119. 16 USC 742a note. (1) shall utilize the land acquisition and other authority under the Fish and Wildlife Act of 1956, as amended, the Fish and Wildlife Coordination Act, as amended, and the Migratory Bird Conservation Act, as appropriate; and

60 Stat. 1080; 72 Stat. 563. 16 USC 561 note. (2) is authorized to acquire by purchase, donation, or otherwise, lands, waters, or interest therein, and such authority shall be in addition to any other land acquisition authority vested in him.

45 Stat. 1222. 16 USC 4601-4 note. (b) ACQUISITIONS.—Funds made available pursuant to the Land and Water Conservation Fund Act of 1965, as amended, may be used for the purpose of acquiring lands, waters, or interests therein under subsection (a) of this section.

COOPERATION WITH THE STATES

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

(b) MANAGEMENT AGREEMENTS.—The Secretary may enter into agreements with any State for the administration and management of any area established for the conservation of endangered species or

threatened species. Any revenues derived from the administration of such areas under these agreements shall be subject to the provisions of section 401 of the Act of June 15, 1935 (49 Stat. 383; 16 U.S.C. 715g).

76 Stat. 701.

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

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

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

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

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

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

(d) ALLOCATION OF FUNDS.—(1) The Secretary is authorized to provide financial assistance to any State, through its respective State agency, which has entered into a cooperative agreement pursuant to subsection (c) of this section to assist in development of programs for the conservation of endangered and threatened species. The Secretary shall make an allocation of appropriated funds to such States based on consideration of—

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

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

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

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

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

So much of any appropriated funds allocated for obligation to any State for any fiscal year as remains unobligated at the close thereof is

authorized to be made available to that State until the close of the succeeding fiscal year. Any amount allocated to any State which is unobligated at the end of the period during which it is available for expenditure is authorized to be made available for expenditure by the Secretary in conducting programs under this section.

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

(i) the Federal share of such program costs shall not exceed 66% per centum of the estimated program cost stated in the agreement; and

(ii) the Federal share may be increased to 75 per centum whenever two or more States having a common interest in one or more endangered or threatened species, the conservation of which may be enhanced by cooperation of such States, enter jointly into an agreement with the Secretary.

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

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

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

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

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

"Establishment period."

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

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

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

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

80 Stat. 383.

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

(i) APPROPRIATIONS.—For the purposes of this section, there is authorized to be appropriated through the fiscal year ending June 30, 1977, not to exceed \$10,000,000.

INTERAGENCY COOPERATION

SEC. 7. The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

INTERNATIONAL COOPERATION

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

66 Stat. 662.

68 Stat. 454.

7 USC 1691.

under this section, such currencies shall be used in preference to funds appropriated under the authority of section 15 of this Act.

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

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

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

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

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

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

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

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

(e) CONVENTION IMPLEMENTATION.—The President is authorized and directed to designate appropriate agencies to act as the Management Authority or Authorities and the Scientific Authority or Authorities pursuant to the Convention. The agencies so designated shall thereafter be authorized to do all things assigned to them under the Convention, including the issuance of permits and certificates. The agency designated by the President to communicate with other parties to the Convention and with the Secretariat shall also be empowered, where appropriate, in consultation with the State Department, to act on behalf of and represent the United States in all regards as required by the Convention. The President shall also designate those agencies which shall act on behalf of and represent the United States in all regards as required by the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere.

56 Stat. 1354.

PROHIBITED ACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) **SPECIES HELD IN CAPTIVITY OR CONTROLLED ENVIRONMENT.**—The provisions of this section shall not apply to any fish or wildlife held in captivity or in a controlled environment on the effective date of this Act if the purposes of such holding are not contrary to the purposes of this Act; except that this subsection shall not apply in the case of any fish or wildlife held in the course of a commercial activity. With respect to any act prohibited by this section which occurs after a period of 180 days from the effective date of this Act, there shall be a rebuttable presumption that the fish or wildlife involved in such act was not held in captivity or in a controlled environment on such effective date.

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

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

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

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

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

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

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

(d) **IMPORTS AND EXPORTS.**—(1) It is unlawful for any person to engage in business as an importer or exporter of fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (B) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants without first having obtained permission from the Secretary.

Recordkeeping

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

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

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

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

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

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

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

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

83 Stat. 277.
16 USC 666cc-4.

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

EXCEPTIONS

SEC. 10. (a) PERMITS.—The Secretary may permit, under such terms and conditions as he may prescribe, any act otherwise prohibited by section 9 of this Act for scientific purposes or to enhance the propagation or survival of the affected species.

(b) HARDSHIP EXEMPTIONS.—(1) If any person enters into a contract with respect to a species of fish or wildlife or plant before the date of the publication in the Federal Register of notice of consideration of that species as an endangered species and the subsequent listing of that species as an endangered species pursuant to section 4 of this Act will cause undue economic hardship to such person under the contract, the Secretary, in order to minimize such hardship, may exempt such person from the application of section 9(a) of this Act to the extent the Secretary deems appropriate if such person applies to him for such exemption and includes with such application such information as the Secretary may require to prove such hardship; except that (A) no such exemption shall be for a duration of more than one year from the date of publication in the Federal Register of notice of consideration of the species concerned, or shall apply to a quantity of fish or wildlife or plants in excess of that specified by the Secretary; (B) the one-year period for those species of fish or wildlife listed by the Secretary as endangered prior to the effective date of this Act shall expire in accordance with the terms of section 3 of the Act of December 5, 1969 (83 Stat. 275); and (C) no such exemption may be granted for the importation or exportation of a specimen listed in Appendix I of the Convention which is to be used in a commercial activity.

16 USC 668cc-3.

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

"Undue economic hardship."

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

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

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

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

(c) NOTICE AND REVIEW.—The Secretary shall publish notice in the Federal Register of each application for an exemption or permit which is made under this subsection. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, written data, views, or arguments with respect to the application. Information received by the Secretary as a part of any application shall be available to the public as a matter of public record at every stage of the proceeding.

Publication in Federal Register.

(d) PERMIT AND EXEMPTION POLICY.—The Secretary may grant exceptions under subsections (a) and (b) of this section only if he finds

and publishes his finding in the Federal Register that (1) such exceptions were applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section 2 of this Act.

(e) ALASKA NATIVES.—(1) Except as provided in paragraph (4) of this subsection the provisions of this Act shall not apply with respect to the taking of any endangered species or threatened species, or the importation of any such species taken pursuant to this section, by—

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

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

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

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

(3) As used in this subsection—

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

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

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

Definitions.

86 Stat. 1033,
16 USC 1373.

PENALTIES AND ENFORCEMENT

SEC. 11. (a) CIVIL PENALTIES.—(1) Any person who knowingly violates, or who knowingly commits an act in the course of a commercial activity which violates, any provision of this Act, or any provision of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a)(1) (A), (B).

(C), (D), (E), or (F), (a)(2) (A), (B), or (C), (c), (d) (other than regulation relating to recordkeeping or filing of reports), (f) or (g) of section 9 of this Act, may be assessed a civil penalty by the Secretary of not more than \$10,000 for each violation. Any person who knowingly violates, or who knowingly commits an act in the course of a commercial activity which violates, any provision of any other regulation issued under this Act may be assessed a civil penalty by the Secretary of not more than \$5,000 for each such violation. Any person who otherwise violates any provision of this Act, or any regulation, permit, or certificate issued hereunder, may be assessed a civil penalty by the Secretary of not more than \$1,000 for each such violation. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Secretary. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action on the record made before the Secretary and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

Notice;
hearing.

(2) Hearings held during proceedings for the assessment of civil penalties authorized by paragraph (1) of this subsection shall be conducted in accordance with section 554 of title 5, United States Code. The Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

80 Stat. 384.

(b) CRIMINAL VIOLATIONS.—(1) Any person who willfully commits an act which violates any provision of this Act, of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a) (1) (A), (B), (C), (D), (E), or (F); (a) (2) (A), (B), or (C), (c), (d) (other than a regulation relating to recordkeeping, or filing of reports), (f), or (g) of section 9 of this Act shall, upon conviction, be fined not more than \$20,000 or imprisoned for not more than one year, or both. Any person who willfully commits an act which violates any provision of any other regulation issued under this Act shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than six months, or both.

(2) The head of any Federal agency which has issued a lease, license, permit, or other agreement authorizing the use of Federal lands, including grazing of domestic livestock, to any person who is convicted of a criminal violation of this Act or any regulation, permit, or certificate issued hereunder may immediately modify, suspend, or revoke each lease, license, permit, or other agreement. The Secretary shall also suspend for a period of up to one year, or cancel, any Federal hunting or fishing permits or stamps issued to any person who is convicted of a criminal violation of any provision of this Act or any

87 STAT. 899

regulation, permit, or certificate issued hereunder. The United States shall not be liable for the payments of any compensation, reimbursement, or damages in connection with the modification, suspension, or revocation of any leases, licenses, permits, stamps, or other agreements pursuant to this section.

65 Stat. 725;
72 Stat. 348.

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

(d) **REWARDS.**—Upon the recommendation of the Secretary, the Secretary of the Treasury is authorized to pay an amount equal to one-half of the civil penalty or fine paid, but not to exceed \$2,500, to any person who furnishes information which leads to a finding of civil violation or a conviction of a criminal violation of any provision of this Act or any regulation or permit issued thereunder. Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

Federal and
State agencies,
utilization.

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

Warrants.

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

Package in-
spection.

(3) Any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, to enforce this Act may detain for inspection and inspect any package, crate, or other container, including its contents, and all accompanying documents, upon importation or exportation. Such person may execute and serve any arrest warrant, search warrant, or other warrant or civil or criminal process issued by any officer or court of competent jurisdiction for enforcement of this Act. Such person so authorized may search and seize, with or without a warrant, as authorized by law. Any fish, wildlife, property, or item so seized shall be held by any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating pending disposition of civil or criminal proceedings, or the institution of an action in rem for forfeiture of such fish, wildlife, property, or item pursuant to paragraph (4) of this subsection; except that the Secretary may, in lieu of holding such fish, wildlife, property, or item, permit the owner or consignee to post a bond or other surety satisfactory to the Secretary.

Search and
seizure, au-
thority.

(4)(A) All fish or wildlife or plants taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, exported, or imported contrary to the provisions of this Act, any regulation made pursuant thereto, or any permit or certificate issued hereunder shall be subject to forfeiture to the United States.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Intervention.

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

Litigation costs.

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

Injunctive relief.

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

46 Stat. 689.
19 USC 1654.

(h) COORDINATION WITH OTHER LAWS.—The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this Act with the administration of the animal quarantine laws (21 U.S.C. 101–105, 111–135b, and 612–614) and section 306 of the Tariff Act of 1930 (19 U.S.C. 1306). Nothing in this Act or any amendment made by this Act shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations or possession of animals and other articles and no proceeding or determination under this Act shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture. Nothing in this Act shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, including, without limitation, section 527 of that Act (19 U.S.C. 1527), relating to the importation of wildlife taken, killed, possessed, or exported to the United States in violation of the laws or regulations of a foreign country.

46 Stat. 741.

ENDANGERED PLANTS

SEC. 12. The Secretary of the Smithsonian Institution, in conjunction with other affected agencies, is authorized and directed to review (1)

species of plants which are now or may become endangered or threatened and (2) methods of adequately conserving such species, and to report to Congress, within one year after the date of the enactment of this Act, the results of such review including recommendations for new legislation or the amendment of existing legislation.

Report to
Congress.

87 STAT. 901
87 STAT. 902

CONFORMING AMENDMENTS

SEC. 13. (a) Subsection 4(c) of the Act of October 15, 1966 (80 Stat. 928, 16 U.S.C. 668dd(c)), is further amended by revising the second sentence thereof to read as follows: "With the exception of endangered species and threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973 in States wherein a cooperative agreement does not exist pursuant to section 6(c) of that Act, nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the system."

Ante, p. 886.

(b) Subsection 10(a) of the Migratory Bird Conservation Act (45 Stat. 1224, 16 U.S.C. 715i(a)) and subsection 401(a) of the Act of June 15, 1935 (49 Stat. 383, 16 U.S.C. 715s(a)), are each amended by striking out "threatened with extinction," and inserting in lieu thereof the following: "listed pursuant to section 4 of the Endangered Species Act of 1973 as endangered species or threatened species."

80 Stat. 929,
80 Stat. 930.

(c) Section 7(a) (1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l-9(a) (1)) is amended by striking out:

78 Stat. 897;
86 Stat. 459.

"THREATENED SPECIES.—For any national area which may be authorized for the preservation of species of fish or wildlife that are threatened with extinction."

and inserting in lieu thereof the following:

"ENDANGERED SPECIES AND THREATENED SPECIES.—For lands, waters, or interests therein, the acquisition of which is authorized under section 5(a) of the Endangered Species Act of 1973, needed for the purpose of conserving endangered or threatened species of fish or wildlife or plants."

(d) The first sentence of section 2 of the Act of September 28, 1962, as amended (76 Stat. 653, 16 U.S.C. 460k-1), is amended to read as follows:

Conservation
areas.
86 Stat. 1063.

"The Secretary is authorized to acquire areas of land, or interests therein, which are suitable for—

"(1) incidental fish and wildlife-oriented recreational development,

"(2) the protection of natural resources,

"(3) the conservation of endangered species or threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973, or

"(4) carrying out two or more of the purposes set forth in paragraphs (1) through (3) of this section, and are adjacent to, or within, the said conservation areas, except that the acquisition of any land or interest therein pursuant to this section shall be accomplished only with such funds as may be appropriated therefor by the Congress or donated for such purposes, but such

property shall not be acquired with funds obtained from the sale of Federal migratory bird hunting stamps."

87 STAT. 902
87 STAT. 903
86 Stat. 1027.

(e) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) is amended—

16 USC 1362.
Ante, P. 884.
16 USC 1402.

(1) by striking out "Endangered Species Conservation Act of 1969" in section 3(1)(B) thereof and inserting in lieu thereof the following: "Endangered Species Act of 1973";

(2) by striking out "pursuant to the Endangered Species Conservation Act of 1969" in section 101(a)(3)(B) thereof and inserting in lieu thereof the following: "or threatened species pursuant to the Endangered Species Act of 1973";

(3) by striking out "endangered under the Endangered Species Conservation Act of 1969" in section 102(b)(3) thereof and inserting in lieu thereof the following: "an endangered species or threatened species pursuant to the Endangered Species Act of 1973"; and

(4) by striking out "of the Interior such revisions of the Endangered Species List, authorized by the Endangered Species Conservation Act of 1969," in section 202(a)(6) thereof and inserting in lieu thereof the following: "such revisions of the endangered species list and threatened species list published pursuant to section 4(c)(1) of the Endangered Species Act of 1973".

86 Stat. 973.
7 USC 136
note.

(f) Section 2(1) of the Federal Environmental Pesticide Control Act of 1972 (Public Law 92-516) is amended by striking out the words "by the Secretary of the Interior under Public Law 91-135" and inserting in lieu thereof the words "or threatened by the Secretary pursuant to the Endangered Species Act of 1973".

REPEALER

80 Stat. 926.
83 Stat. 275.

SEC. 14. The Endangered Species Conservation Act of 1969 (sections 1 through 3 of the Act of October 15, 1966, and sections 1 through 6 of the Act of December 5, 1969; 16 U.S.C. 668aa-668cc-6), is repealed.

AUTHORIZATION OF APPROPRIATIONS

SEC. 15. Except as authorized in section 6 of this Act, there are authorized to be appropriated—

(A) not to exceed \$4,000,000 for fiscal year 1974, not to exceed \$8,000,000 for fiscal year 1975 and not to exceed \$10,000,000 for fiscal year 1976, to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act; and

(B) not to exceed \$2,000,000 for fiscal year 1974, \$1,500,000 for fiscal year 1975 and not to exceed \$2,000,000 for fiscal year 1976, to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act.

EFFECTIVE DATE

SEC. 16. This Act shall take effect on the date of its enactment.

MARINE MAMMAL PROTECTION ACT OF 1972

SEC. 17. Except as otherwise provided in this Act, no provision of this Act shall take precedence over any more restrictive conflicting provision of the Marine Mammal Protection Act of 1972.

Approved December 28, 1973.

86 Stat. 1027.
16 USC 1361
note.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 93-412 (Comm. on Merchant Marine and Fisheries)
and No. 93-740 (Comm. of Conference).
SENATE REPORT No. 93-307 (Comm. on Commerce).
CONGRESSIONAL RECORD, Vol. 119 (1973):
July 24, considered and passed Senate.
Sept. 18, considered and passed House, amended, in lieu of
H. R. 37.
Dec. 19, Senate agreed to conference report.
Dec. 20, House agreed to conference report.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENT, Vol. 10, No. 1 (1974):
Dec. 28, 1973, Presidential statement.

○

Endangered Species Act Amendments of 1979*

* Pub. L. 96-159, 93 Stat. 1225; 16 U.S.C. §1531-33, 1536-37a, 1539 and 1542 (1979).

Public Law 96-159
96th Congress

An Act

To authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981, and 1982, and for other purposes.

Dec. 28, 1979
[S. 1143]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2(a)(5) of the Endangered Species Act of 1973 (16 U.S.C. 1531(a)(5)) is amended by striking out "fish and wildlife." and inserting in lieu thereof "fish, wildlife, and plants."

Endangered
Species Act of
1973,
appropriation
authorization.

SEC. 2. Section 3(11) of the Endangered Species Act of 1973 (16 U.S.C. 1532(11)) is amended by striking out "(A)" and all that follows thereafter and inserting in lieu thereof "violate section 7(a)(2)."

SEC. 3. Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended—

(1) by amending subsection (b)(1) by striking out "him" and inserting in lieu thereof the following: "him after conducting a review of the status of the species";

(2) by amending subsection (f)(2)(B)(i) to read as follows:

"(i) not less than 60 days before the effective date of the regulation, shall publish—

Publication in
Federal
Register.

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

"(II) if the proposed regulation specifies any critical habitat, general notice of the regulation (including a summary of the text, and a map of the proposed critical habitat) in a newspaper of general circulation within or adjacent to such habitat";

(3) by amending subsection (f)(2)(B)(iv)(II) by striking out "if requested," and inserting in lieu thereof "if requested within 15 days after the date on which the public meeting is conducted,";

(4) by amending that part of subsection (f)(2)(C) which precedes clause (i) by inserting " subsection (b)(4) of this section," immediately after "Neither subparagraph (A) or (B) of this paragraph";

(5) by amending subsection (f)(2)(C)(ii)—

(A) by striking out "fish or wildlife," and inserting in lieu thereof "fish or wildlife or plants,"

(B) by striking out "fish and wildlife," and inserting in lieu thereof "fish, wildlife, and plants,"

(C) by striking out "120-day period" each place it appears therein and inserting in lieu thereof "240-day period", and

(D) by adding at the end thereof the following new sentence: "If at any time after issuing an emergency regulation the Secretary determines, on the basis of the best scientific and commercial data available to him, that substantial evidence does not exist to warrant such regulation, he shall withdraw it."; and

(6) by adding at the end thereof the following new subsection:

"(h) AGENCY GUIDELINES.—The Secretary shall establish, and publish in the Federal Register, agency guidelines to insure that the

Publication in
Federal
Register.

purposes of this section are achieved efficiently and effectively. Such guidelines shall include, but are not limited to—

“(1) procedures for recording the receipt and the disposition of petitions submitted under subsection (c)(2) of this section;

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

“(3) a ranking system to assist in the identification of species that should receive priority review for listing; and

“(4) a system for developing and implementing, on a priority basis, recovery plans under subsection (g) of this section.

Comments.

The Secretary shall provide to the public notice of, and opportunity to submit written comments on, any guideline (including any amendment thereto) proposed to be established under this subsection.”.

SEC. 4. Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) is amended—

(1) by amending subsection (a)—

(A) by striking out “(a) CONSULTATION.—” and inserting in lieu thereof “(a) FEDERAL AGENCY ACTIONS AND CONSULTATIONS.—(1)”;

(B) by striking out the third sentence thereof; and

(C) by adding at the end thereof the following:

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

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

16 USC 1533.

(2) by amending the last sentence of subsection (b) to read as follows: “The Secretary shall suggest those reasonable and prudent alternatives which he believes would not violate subsection (a)(2) and can be taken by the Federal agency or the permit or license applicant in implementing the agency action.”;

(3) by amending each of subsections (b), (c), (d), (e)(2), (f), (g)(1) and (5), (h)(1), and (m) by striking out “subsection (a)” wherever it appears therein and inserting in lieu thereof “subsection (a)(2)”;

(4) by further amending subsection (c)—

(A) by inserting “(1)” immediately after “BIOLOGICAL ASSESSMENT.—”, and

(B) by adding at the end thereof the following new paragraph:

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

Secretary and under the supervision of the appropriate Federal agency.”;

(5) by striking out “avoid jeopardizing” and all that follows thereafter in subsection (d) and inserting in lieu thereof “not violate subsection (a)(2).”;

(6) by further amending subsection (g)(1) by striking out “may jeopardize” and all that follows thereafter in the first sentence thereof and inserting in lieu thereof “would violate subsection (a)(2).”;

(7) by amending subsection (g)(2)(A) by striking out “process.” and inserting in lieu thereof “process; or, in the case of any agency action involving a permit or license applicant, not later than 90 days after the date on which the Federal agency concerned takes final agency action, for purposes of chapter 7 of title 5, United States Code, with respect to the issuance of the permit or license.”;

5 USC 701 *et seq.*

(8) by amending subsection (g)(3) by redesignating subparagraph (B) as subparagraph (C), and by inserting immediately after subparagraph (A) the following new subparagraph:

“(B) If biological opinions of both the Secretary of the Interior and the Secretary of Commerce indicate that an agency action would violate subsection (a)(2), such Secretaries shall jointly convene a review board to consider any application for exemption filed with respect to such agency action.”;

(9) by further amending subsection (g)(5)—

(A) by redesignating clauses (1) and (2) as clauses (A) and (B), respectively,

(B) by inserting “the Federal agency concerned and” immediately before “such exemption applicant” in clause (B) (as so redesignated),

(C) by redesignating subclauses (A), (B), and (C) as subclauses (i), (ii), and (iii), respectively,

(D) by striking out “will avoid jeopardizing” and all that follows thereafter in subclause (i) (as so redesignated) and inserting in lieu thereof “would not violate subsection (a)(2).”, and

(E) by striking out “exemption applicant” and all that follows thereafter in the last sentence and inserting in lieu thereof “Federal agency concerned or the exemption applicant has not met its respective requirements under subclause (i), (ii), or (iii) shall be considered final agency action for purposes of chapter 7 of title 5 of the United States Code.”;

(10) by amending subsection (g)(6) by striking out “subparagraphs (A), (B), and (C)” and inserting in lieu thereof “subclauses (i), (ii), and (iii)”;

(11) by amending subsection (h)(2) to read as follows:

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

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

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

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

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

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

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

(12) by amending the first sentence of subsection (g) to read as follows: "There are authorized to be appropriated to the Secretary to assist review boards and the Committee in carrying out their functions under subsections (e), (f), (g), and (h) of this section not to exceed \$600,000 for each of fiscal years 1979, 1980, 1981, and 1982."

SEC. 5. Section 8 of the Endangered Species Act of 1973 (16 U.S.C. 1537) is amended—

(1) by inserting "and plants" immediately after "fish or wildlife" in subsection (b)(1);

(2) by inserting "or plants" immediately after "fish or wildlife" each place it appears in subsection (b)(3);

(3) by inserting "or plants" immediately after "fish or wildlife" in subsection (c)(1); and

(4) by striking out subsection (e).

SEC. 6. (a) The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) is further amended—

(1) by adding immediately after section 8 the following new section:

"CONVENTION IMPLEMENTATION

16 USC 1537a.

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

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

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

"(d) INTERNATIONAL CONVENTION ADVISORY COMMISSION.—(1) There is hereby established the International Convention Advisory Commission (hereinafter in this section referred to as the 'Commission').

Membership.

"(2) The Commission shall be composed of the following members:

"(A) One member appointed by each of the following Federal officers from his respective agency:

"(i) The Secretary.

"(ii) The Secretary of Agriculture.

"(iii) The Secretary of Commerce.

"(iv) The Director of the National Science Foundation.

"(v) The Chairman of the Council on Environmental Quality.

"(B) One member appointed by the Secretary from among officers and employees of the State agencies having fish and wildlife conservation and management responsibilities.

"(C) The Secretary of the Smithsonian Institution is invited to appoint a member.

"(3)(A) Individuals who are appointed as members of the Commission under paragraph (2) must be scientifically qualified.

"(B) The term of office of a member of the Commission appointed under paragraph (2)(B) is two years and an individual may be appointed under such paragraph for any number of terms; except that an individual may not be appointed under that paragraph for a term that would be a third consecutive term for that individual under that paragraph.

Term of office.

"(C) While away from his home or regular place of business in the performance of services for the Commission, a member appointed under paragraph (2) (B) or (C) shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as the expenses authorized by section 5703(b) of title 5, United States Code, for persons in the Government service employed intermittently.

Travel expenses.

"(D) Members of the Commission who are full-time officers or employees of the United States shall receive no additional compensation on account of their service on the Commission.

"(4)(A) The Commission shall elect a chairman from among its members. The term of office of the chairman is one year.

Chairman.

"(B) No recommendation referred to in paragraph (5) shall be deemed to be a recommendation of the Commission unless a majority of the members of the Commission vote for that recommendation.

"(5) The Commission shall make recommendations to the Secretary or his designee on all matters pertaining to the responsibilities of the Scientific Authority under the terms of the Convention. The Commission shall include with any such recommendation any written dissenting view made by any member.

Recommendations to Secretary.

"(6) In the discharge of its responsibilities, the Commission shall, to the extent practicable, ascertain the views of, and utilize the expertise of, the governmental and nongovernmental scientific communities, State agencies responsible for the conservation of wild fauna or flora, humane groups, zoological and botanical institutions, recreational and commercial interests, the conservation community and others as appropriate.

Experts and consultants.

"(7) In any case in which the Scientific Authority decides not to accept a recommendation made by the Commission under paragraph (5), the Scientific Authority shall provide to the Commission a written explanation of the reasons for that decision and shall publish the explanation in the Federal Register.

Explanation, publication in Federal Register.

"(3)(A) The Chairman of the Commission, with the concurrence of the Commission, shall appoint an Executive Secretary for the Commission. The Executive Secretary shall carry out such duties and functions as shall be prescribed by the Commission, shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

Executive Secretary.

"(B) The Secretary shall provide the necessary staff and administrative support for the Commission.

"(e) WILDLIFE PRESERVATION IN WESTERN HEMISPHERE.—The President shall designate those agencies of the Federal Government that shall act on behalf of, and represent, the United States in all regards

5 USC 5101 et seq., 5331.

as required by the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere.”; and

(2) by amending the table of contents by inserting immediately after the section title for section 8 the following:

“Sec. 8A. Convention implementation.”.

16 USC 1537a
note.

(b) Until such time as the Chairman, Members, and Executive Secretary of the International Convention Advisory Commission are appointed, but not later than 90 days after the date of the enactment of this Act, the functions of the Commission shall be carried out by the Endangered Species Scientific Authority as established by Executive Order Numbered 11911, with staff and administrative support being provided by the Secretary of the Interior as set forth in that Executive order.

16 USC 1537
note.

Sec. 7. Section 10(f) of the Endangered Species Act of 1973 (16 U.S.C. 1539(f)) is amended—

(1) in paragraph (4), by inserting “unless such exemption is renewed under paragraph (8)” after “certificate” in subparagraph (C); and

(2) by adding at the end thereof the following new paragraphs:

“(8)(A) Any person to whom a certificate of exemption has been issued under paragraph (4) of this subsection may apply to the Secretary for a renewal of such exemption for a period not to exceed three years beginning on the expiration date of such certificate. Such application shall be made in the same manner as the application for exemption was made under paragraph (3), but without regard to subparagraph (A) of such paragraph.

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

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

Sec. 8. Section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended to read as follows:

“AUTHORIZATION OF APPROPRIATIONS

16 USC 1535,
1536.

“Sec. 15. Except as authorized in sections 6 and 7 of this Act, there are authorized to be appropriated—

“(1) not to exceed \$23,000,000 for each of fiscal years 1979 and 1980, not to exceed \$25,000,000 for fiscal year 1981, and not to exceed \$27,000,000 for fiscal year 1982 to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act;

“(2) not to exceed \$2,500,000 for each of fiscal years 1979 and 1980, not to exceed \$3,000,000 for fiscal year 1981, and not to exceed \$3,500,000 for fiscal year 1982 to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act; and

“(3) not to exceed \$1,500,000 for fiscal year 1980, not to exceed \$1,750,000 for fiscal year 1981, and not to exceed \$1,850,000 for fiscal year 1982 to enable the Department of Agriculture to carry out its functions and responsibilities with respect to the enforcement of this Act and the Convention which pertain to the importation or exportation of terrestrial plants.”.

Approved December 28, 1979.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 96-167 accompanying H.R. 2218 (Comm. on Merchant Marine and Fisheries) and No. 96-697 (Com. of Conference).

SENATE REPORT No. 96-151 (Comm. on Environment and Public Works).

CONGRESSIONAL RECORD, Vol. 125 (1979):

June 13, considered and passed Senate.

Oct. 24, H.R. 2218 considered and passed House; passage vacated and S. 1143, amended, passed in lieu.

Dec. 19, House and Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 15, No. 52:

Dec. 28, Presidential statement.

1984 Listing of Endangered Species*

* 50 C.F.R. §17.11 and 17.12 (1984).

**Title 50—Wildlife and Fisheries
PART 17—ENDANGERED AND
THREATENED WILDLIFE AND PLANTS**

Subpart B—Lists

Source: 48 FR 34182, July 27, 1983, unless otherwise noted.

§ 17.11 Endangered and threatened wildlife.

(a) The list in this section contains the names of all species of wildlife which have been determined by the Services to be Endangered or Threatened. It also contains the names of species of wildlife treated as Endangered or Threatened because they are sufficiently similar in appearance to Endangered or Threatened species (see § 17.50 *et seq.*).

(b) The columns entitled "Common Name," "Scientific Name," and "Vertebrate Population Where Endangered or Threatened" define the species of wildlife within the meaning of the Act. Thus, differently classified geographic populations of the same vertebrate subspecies or species shall be identified by their differing geographic boundaries, even though the other two columns are identical. The term "Entire" means that all populations throughout the present range of a vertebrate species are listed. Although common names are included, they cannot be relied upon for identification of any specimen, since they may vary greatly in local usage. The Services shall use the most recently accepted scientific name. In cases in which confusion might arise, a synonym(s) will be provided in parentheses. The Services shall rely to the extent practicable on the *International Code of Zoological Nomenclature*.

(c) In the "Status" column the following symbols are used: "E" for

Endangered, "T" for Threatened, and "E (or T) (S/A)" for similarity of appearance species.

(d) The other data in the list are nonregulatory in nature and are provided for the information of the reader. In the annual revision and compilation of this Title, the following information may be amended without public notice: the spelling of species' names, historical range, footnotes, references to certain other applicable portions of this Title, synonyms, and more current names. In any of these revised entries, neither the species, as defined in paragraph (b) of this section, nor its status may be changed without following the procedures of Part 424 of this Title.

(e) The "Historic Range" indicates the known general distribution of the species or subspecies as reported in the current scientific literature. The present distribution may be greatly reduced from this historic range. This column does not imply any limitation on the application of the prohibitions in the Act or implementing rules. Such prohibitions apply to all individuals of the species, wherever found.

(f)(1) A footnote to the **Federal Register** publication(s) listing or reclassifying a species is indicated under the column "When Listed." Footnote numbers to §§ 17.11 and 17.12 are in the same numerical sequence, since plants and animals may be listed in the same **Federal Register** document. That document, at least since 1973, includes a statement indicating the basis for the listing, as well as the effective date(s) of said listing.

(2) The "Special Rules" and "Critical Habitat" columns provide a cross reference to other sections in Parts 17, 222, 226, or 227. The term "NA" (not applicable) appearing in either of these two columns indicates that there are no

special rules and/or Critical Habitat for that particular species. However, all other appropriate rules in Parts 17, 217-227, and 402 still apply to that species. In addition, there may be other rules in this Title that relate to such wildlife, e.g., port-of-entry requirements. It is not intended that the references in the "Special Rules" column list all the regulations of the two Services which might apply to the species or to the regulations of other Federal agencies or State or local governments.

(g) The listing of a particular taxon includes all lower taxonomic units. For example, the genus *Hylobates* (gibbons) is listed as Endangered throughout its entire range (China, India, and SE Asia); consequently, all species, subspecies, and populations of that genus are considered listed as Endangered for the purposes of the Act. In 1978 (43 FR 6230-6233) the species *Haliaeetus leucocephalus* (bald eagle) was listed as Threatened in "USA (WA, OR, MN, WI, WI, MI)" rather than its entire population; thus, all individuals of the bald eagle found in those five States are considered listed as Threatened for the purposes of the Act.

(h) The "List of Endangered and Threatened Wildlife" is provided below:

Editorial Note: This is a compilation and special reprint of 50 CFR 17.11 and 17.12 and is current as of the date shown on the cover. Minor changes and corrections to the October 1, 1983, compilation of 50 CFR have been incorporated in this printing, as well as all published final rules that have subsequently appeared in the **Federal Register**. Otherwise, no entry in these lists has been significantly affected. This list has been prepared by the staff of the Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240. Readers are requested to advise the Service of any errors or omissions to this list. Copies are available from the Publications Unit, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

Species		Scientific name	Historic range	Vulnerable population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Subspecies							
MAMMALS								
Anoa, lowland		<i>Bubalus depressicornis</i> (= <i>B. anoa depressicornis</i>)	Indonesia	Entire	E	0	NA	NA
Anoa, mountain		<i>Bubalus quarlesi</i> (= <i>B. anoa quarlesi</i>)	do	do	E	15	NA	NA
Antelope, giant sable		<i>Hippotragus nigricornis</i>	China (Tibet, Himalayas)	do	E	15	NA	NA
Argali		<i>Ovis ammon hodgsoni</i>	Venezuela and Guyana to Argentina	do	E	15	NA	NA
Armedillo, giant		<i>Prodonates maximus</i> (= <i>giganteus</i>)	Argentina	do	E	3	NA	NA
Armadillo, pink tigris		<i>Chlamyphorus truncatus</i>	Somalia, Sudan, Ethiopia	do	E	3	NA	NA
Ass, African wild		<i>Equus zandus</i> (= <i>africanus</i>)	Southwestern and Central Asia	do	E	3	NA	NA
Ass, Asian wild (= kulan, onager)		<i>Equus hemionus</i>	Malagasy Republic (= Madagascar)	do	E	3	NA	NA
Avahi		<i>Avalhi</i> (= <i>Lehanotus laniger</i> (= entire genus))	Madagascar	do	E	3	NA	NA
Aye-aye		<i>Daubentonius madagascariensis</i>	Madagascar	do	E	3	NA	NA
Babirusa		<i>Babirusa babirusa</i>	Indonesia	do	E	15	NA	NA
Baboon, gelada		<i>Theropithecus gelada</i>	Ethiopia	do	T	16	NA	17.40(c)
Bandicoot, barred		<i>Perameles boydianus</i>	Australia	do	E	4	NA	NA
Bandicoot, desert		<i>Perameles eremiana</i>	do	do	E	6	NA	NA
Bandicoot, lesser rabbit		<i>Macrotis leucura</i>	do	do	E	4	NA	NA
Bandicoot, pig-footed		<i>Chaeropus ecaudatus</i>	do	do	E	4	NA	NA
Bandicoot, rabbit		<i>Macrotis lagotis</i>	do	do	E	4	NA	NA
Banteng		<i>Bos javanicus</i> (= <i>banteng</i>)	Southeast Asia	do	E	3	NA	NA
Bat, Bulmer's fruit (flying fox)		<i>Aptesiles bulmeri</i>	Papua New Guinea	do	E	139	NA	NA
Bat, bumbebee		<i>Craseonycteris thonglongyai</i>	Thailand	do	E	139	NA	NA
Bat, Hawaiian hoary		<i>Myotis graysoni</i>	Central and Southeastern U.S.A.	do	E	13	NA	NA
Bat, Indiana		<i>Lasurus cinereus semiothis</i>	U.S.A. (Hawaii)	do	E	2	NA	NA
Bat, Ozark big-eared		<i>Myotis sodalis</i>	Eastern and Midwestern U.S.A.	do	E	1	17.95(a)	NA
Bat, Rodrigues fruit (flying fox)		<i>Plecotus rodriguesi</i>	U.S.A. (MO, OK, AR)	do	E	85	NA	NA
Bat, Singapore roundleaf horseshoe		<i>Hipposideros nelsoni</i>	Indian Ocean: Rodrigues Island	do	E	139	NA	NA
Bat, Virginia big-eared		<i>Hipposideros nelsoni</i>	Malaysia	do	E	139	NA	NA
Bear, brown		<i>Ursus arctos ursinus</i>	China (Tibet)	do	E	85	17.95(a)	NA
Bear, brown or grizzly		<i>Ursus arctos arctos</i>	Paleartic	Italy	E	15	NA	NA
		<i>Ursus arctos horribilis</i>	Canada, Western U.S.A.	U.S.A. --48	T	1, 2, 9	NA	17.40(b)
			contiguous States.					
Bear, Mexican grizzly		<i>Ursus arctos nelsoni</i>	Mexico	Entire	E	3	NA	NA
Beaver		<i>Castor fiber brulii</i>	Mongolia	do	E	15	NA	NA
Bison, wood		<i>Bison bison athabascensis</i>	Canada, Northwestern U.S.A.	Canada	E	3	NA	NA
Bobcat		<i>Felis rufus escuinpaensis</i>	Central Mexico	Entire	E	15	NA	NA
Bonneted (lanelope)		<i>Dama dama dama</i>	South Africa	do	E	15	NA	NA
Camel, Bactrian		<i>Camelus bactrianus</i> (= <i>ferus</i>)	Mongolia, China	do	E	15	NA	NA
Caribou, woodland		<i>Rangifer tarandus caribou</i>	Canada (that part of S.E. Bn. Col. bounded by the Can.-USA border, Columbia R., Kootenay R., Kootenay L., and Kootenai R.), U.S.A. (ID, WA)	Canada (that part of S.E. Bn. Col. bounded by the Can.-USA border, Columbia R., Kootenay R., Kootenay L., and Kootenai R.), U.S.A. (ID, WA)	E	128E, 138E, 143	NA	NA
Cat, Andean		<i>Felis jacobita</i>	Chile, Peru, Bolivia, Argentina	do	E	15	NA	NA
Cat, black-footed		<i>Felis nigripes</i>	Southern Africa	do	E	15	NA	NA

Species	Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Cat, flat-headed		<i>Felis planiceps</i>	Malaysia, Indonesia	..do.	E	15	NA	NA
Cat, khomole		<i>Felis (Mayailurus) bomotensis</i>	Japan (Iriomote Island, Ryukyu Islands)	..do.	E	50	NA	NA
Cat, leopard		<i>Felis bengalensis bengalensis</i>	India, Southeast Asia	..do.	E	15	NA	NA
Cat, marbled		<i>Felis marmorata</i>	Nepal, Southeast Asia, Indonesia	..do.	E	139	NA	NA
Cat, Pakistan sand		<i>Felis margarita schiffeli</i>	Pakistan	..do.	E	15	NA	NA
Cat, Temminck's (= golden cat)		<i>Felis temminckii</i>	Nepal, China, Southeast Asia, Indonesia (Sumatra)	..do.	E	5	NA	NA
Cat, tiger		<i>Felis tigris</i>	Costa Rica to northern Argentina	..do.	E	15	NA	NA
Chamois, Apennine		<i>Rupicapra rupicapra ornata</i>	Italy	..do.	E	3, 5	NA	NA
Choeleah		<i>Acinonyx jubatus</i>	Africa to India	..do.	T	16	NA	17 40(G) 17 40(C)
Chimpanzee		<i>Pan troglodytes</i>	West and Central Africa	..do.	T	16	NA	NA
Chimpanzee, pygmy		<i>Pan paniscus</i>	Zaire	..do.	E	15	NA	NA
Chinchilla		<i>Chinchilla brevicaudata boliviana</i>	Bolivia	..do.	E	50	NA	NA
Givul, Malabar large-spotted		<i>Viverra zibetha</i>	India	..do.	E	6	NA	NA
Gougar, eastern		<i>Felis concolor cougar</i>	Eastern North America	..do.	E	50	NA	NA
Deer, Bactrian		<i>Cervus elaphus bactrianus</i>	U.S.S.R., Afghanistan	..do.	E	3	NA	NA
Deer, Bawean		<i>Axis (= Cervus) porcinus bawean</i>	Indonesia	..do.	E	50	NA	NA
Deer, Barbary		<i>Cervus elaphus barbarus</i>	Morocco, Tunisia, Algeria	..do.	E	10	NA	NA
Deer, Cedros Island male		<i>Odocoileus hemionus oedoceros</i>	Mexico (Cedros Island)	..do.	E	1	NA	NA
Deer, Columbian white-tailed		<i>Odocoileus virginianus leucurus</i>	U.S.A. (WA, OR)	..do.	E	50	NA	NA
Deer, Corsican red		<i>Cervus elaphus corsicanus</i>	India to Southeast Asia	..do.	E	3	NA	NA
Deer, Ed's brow-anthelred		<i>Cervus elaphus</i>	India to Southeast Asia	..do.	E	50	NA	NA
Deer, Formosan sika		<i>Cervus nippon taibaiensis</i>	Taiwan	..do.	E	15	NA	NA
Deer, hog		<i>Axis (= Cervus) porcinus sarraniticus</i>	Thailand, Indochina	..do.	E	1	NA	NA
Deer, key		<i>Odocoileus virginianus clavium</i>	U.S.A. (southern Florida)	..do.	E	3	NA	NA
Deer, marsh		<i>Blastocercus nicholsonius</i>	Argentina, Uruguay, Paraguay, Bolivia, Brazil	..do.	E	3	NA	NA
Deer, McNeill's		<i>Cervus elaphus macneilli</i>	China (Sinkiang, Tibet)	..do.	E	3	NA	NA
Deer, musk		<i>Moschus</i> spp. (all species)	China (Tibet), Bhutan, Burma, Yunnan, India, Nepal, Pakistan, Sikkim	..do.	F	15	NA	NA
Deer, North China sika		<i>Cervus nippon mandchuricus</i>	China (Shantung and Chihli Provinces)	..do.	E	50	NA	NA
Deer, pampas		<i>Ozotoceros bezoarticus</i>	Brazil, Argentina, Uruguay, Bolivia, Paraguay	..do.	E	15	NA	NA
Deer, Persian fallow		<i>Dama dama mesopotamica</i>	Iraq, Iran	..do.	E	3	NA	NA
Deer, Philippine		<i>Axis (= Cervus) porcinus casimianensis</i>	Philippines (Cadamen Islands)	..do.	E	16	NA	NA
Deer, Ryukyu sika		<i>Cervus nippon keramae</i>	Japan (Ryukyu Islands)	..do.	E	50	NA	NA
Deer, Siam sika		<i>Cervus nippon grassianus</i>	China (Shansi Province)	..do.	E	50	NA	NA
Deer, South China sika		<i>Cervus nippon kopschi</i>	Southern China	..do.	E	50	NA	NA
Deer, swamp (= barasingha)		<i>Cervus duvauceli</i>	India, Nepal	..do.	E	3	NA	NA
Deer, Yarkand		<i>Cervus elaphus yarkandensis</i>	China (Sinkiang)	..do.	E	50	NA	NA
Dhole (= Asiatic wild dog)		<i>Cuon alpinus</i>	U.S.S.R., Korea, China, India, Southeast Asia	..do.	E	3	NA	NA
Dibbler		<i>Antechinus ssp.</i>	Asia	..do.	E	4	NA	NA
Dog, African wild		<i>Lycan pictus</i>	Australia	..do.	E	139	NA	NA
Dry		<i>Papio leucophaeus</i>	Sub-Saharan Africa	..do.	E	16	NA	NA
Dugong		<i>Dugong dugon</i>	Equatorial West Africa	..do.	E	4	NA	NA
Dukler, Jentink's		<i>Cephalophus jentinki</i>	East Africa to southern Japan, including U.S.A. (Trust Territories)	..do.	E	4	NA	NA
Eland, Western giant		<i>Taurotragus derbianus derbianus</i>	Sierra Leone, Liberia, Ivory Coast, Senegal to Ivory Coast	..do.	E	50	NA	NA

Species		Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Historic range							
Elephant, African	Africa	<i>Loxodonta africana</i>	South-central and Southeast Asia	do	T	40	NA	17,40(e)
Elephant, Asian	South-central and Southeast Asia	<i>Elephas maximus</i>	do	do	E	15	NA	NA
Ferret, black-footed	Western U.S.A., Western Canada	<i>Mustela nigripes</i>	do	do	E	1, 3	NA	NA
Fox, Northern swift	U.S.A. (northern plains), Canada	<i>Vulpes velox hebes</i>	do	do	E	3	NA	NA
Fox, San Joaquin kit	U.S.A. (California)	<i>Vulpes macrotis macrotis</i>	do	do	E	1	NA	NA
Fox, Timen	Ethiopia	<i>Canis (Simons) semensis</i>	do	do	E	50	NA	NA
Gazelle, Clark's (= Doherty)	Somalia, Ethiopia	<i>Antidorcas clarkii</i>	do	do	E	3	NA	NA
Gazelle, Cuvier's	Morocco, Algeria, Tunisia	<i>Gazella cuvieri</i>	do	do	E	3	NA	NA
Gazelle, Mhor	Morocco	<i>Gazella dama mhorr</i>	do	do	E	3	NA	NA
Gazelle, Moroccan (= Dorcas)	Morocco, Algeria, Tunisia	<i>Gazella dorcas massasiya</i>	do	do	E	3	NA	NA
Gazelle, Rio de Oro Dama	Western Sahara	<i>Gazella dama luzeni</i>	do	do	E	3	NA	NA
Gazelle, Arabian	Arabian Peninsula, Palestine, Sinai	<i>Gazella gazelle</i>	do	do	E	3	NA	NA
Gazelle, sand	Jordan, Arabian Peninsula	<i>Gazella subdortosa marica</i>	do	do	E	50	NA	NA
Gazelle, Saudi Arabian	Israel, Iraq, Jordan, Syria, Arabian Peninsula	<i>Gazella dorcas saudiya</i>	do	do	E	50	NA	NA
Gazelle, Pelzeln's	Somalia	<i>Gazella dorcas pelzelnii</i>	do	do	E	50	NA	NA
Gazelle, slender-horned (= Rhim)	Sudan, Egypt, Algeria, Libya	<i>Gazella leptoceros</i>	do	do	E	3	NA	NA
Gabbons	China, India, Southeast Asia	<i>Hylobates</i> spp. (including <i>Nomascus</i>)	do	do	E	3, 15	NA	NA
Goat, wild (= Chiltan marker)	Southeastern Asia	<i>Capra aegagrus</i> (= <i>falconeri chiltanensis</i>)	do	do	E	15	NA	NA
Goral	East Asia	<i>Nemorhaedus goral</i>	do	do	E	15	NA	NA
Gonilla	Central and Western Africa	<i>Gonilla gonilla</i>	do	do	E	3	NA	NA
Hare, hispid	India, Nepal, Bhutan	<i>Caprolagus hispidus</i>	do	do	E	3	NA	NA
Hartebeest, Swynhoe's	Ethiopia, Somalia	<i>Alcelaphus buselaphus swynhoei</i>	do	do	E	15	NA	NA
Hartebeest, Tora	Ethiopia, Sudan, Egypt	<i>Alcelaphus buselaphus tora</i>	do	do	E	3, 50	NA	NA
Hog, pygmy	India, Nepal, Bhutan, Sikkim	<i>Sus salweenis</i>	do	do	E	50	NA	NA
Horse, Przewalski's	Mongolia, China	<i>Equus przewalskii</i>	do	do	E	3	NA	NA
Huemul, North Andean	Ecuador, Peru, Chile, Bolivia, Argentina	<i>Hippocamelus antisensis</i>	do	do	E	15	NA	NA
Huemul, South Andean	Chile, Argentina	<i>Hippocamelus desiccus</i>	do	do	E	15	NA	NA
Hyena, Barbary	Morocco, Algeria, Tunisia	<i>Hyiena hyiena barbata</i>	do	do	E	3	NA	NA
Hyena, brown	Southern Africa	<i>Hyiena brunnea</i>	do	do	E	3	NA	NA
Ibex, Pyrenean	Spain	<i>Capra pyrenaica pyrenaica</i>	do	do	E	3	NA	NA
Ibex, Waik	Ethiopia	<i>Capra wallo</i>	do	do	E	3	NA	NA
Impati, black-faced	Namibia, Angola	<i>Aepyceros melampus pelers</i>	do	do	E	3	NA	NA
Indri	Madagascar (= Madagascar)	<i>Indri indri</i> (= entire genus)	do	do	E	3	NA	NA
Jaguar	U.S.A. (Texas), Mexico	<i>Panthera onca</i>	do	do	E	3	NA	NA
Jaguarundi	Mexico southward	<i>Felis jagouaroundi cacomifi</i>	do	do	E	3	NA	NA
Jaguarundi	do	<i>Felis jagouaroundi fossata</i>	do	do	E	15	NA	NA
Jaguarundi	do	<i>Felis jagouaroundi fossata</i>	do	do	E	15	NA	NA
Jaguarundi	do	<i>Felis jagouaroundi torifica</i>	do	do	E	15	NA	NA
Kangaroo, eastern gray	U.S.A. (Arizona), Mexico	<i>Macropus giganteus</i> (all subspecies except <i>tasmanensis</i>)	do	do	E	15	NA	NA
Kangaroo, red	Australia	<i>Macropus (Megalania) rufus</i>	do	do	T	7	NA	17,40(a)
Kangaroo, Tasmanian forestier	Australia (Tasmania)	<i>Macropus giganteus tasmanensis</i>	do	do	T	7	NA	17,40(b)
Kangaroo, western gray	Australia	<i>Macropus fuliginosus</i>	do	do	E	6	NA	NA
Kourou	Vietnam, Laos, Cambodia, Thailand	<i>Bos sauvaei</i>	do	do	E	7	NA	NA
Langur, capped	India, Burma, Bangladesh	<i>Presbytis pileata</i>	do	do	E	3	NA	NA
Langur, entellus	China (Tibet), India, Pakistan, Kashmir, Sri Lanka, Sikkim, Bangladesh	<i>Presbytis entellus</i>	do	do	E	15	NA	NA
Langur, Douc	Cambodia, Laos, Vietnam	<i>Pygathrix nemaeus</i>	do	do	E	3	NA	NA
Langur, Francois	China (Kwangsi), Indochina	<i>Presbytis francoisi</i>	do	do	E	16	NA	NA
Langur, golden	India (Assam), Bhutan	<i>Presbytis geei</i>	do	do	E	15	NA	NA

Species	Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Langur, long-tailed		<i>Presbytis poliozona</i>	Indonesia	..do	T	16	NA	17-40(G)
Langur, Pagi Island		<i>Nasalis (Nasalis) concoder</i>	..do	..do	E	3	NA	NA
Langur, purple-faced		<i>Presbytis senex</i>	Sri Lanka (= Ceylon)	..do	T	16	NA	17-40(G)
Langur, Tonkin snub-nosed		<i>Pygathrix (Haplorhina) eremicus</i>	Vietnam	..do	T	16	NA	17-40(G)
Lechwe, red		<i>Kobus leche</i>	Southern Africa	..do	T	3, 15, 106	NA	NA
Lemurs		Lemuridae (incl. Cheirogaleidae, Lepilemuridae); all members of genera <i>Lemur</i> , <i>Phaner</i> , <i>Haplorhina</i> , <i>Lepilemur</i> , <i>Microcebus</i> , <i>Allocebus</i> , <i>Cheirogaleus</i> , <i>Varecia</i>	Madagascar (= Madagascar)	..do	E	3, 15	NA	NA
Leopard		<i>Panthera pardus</i>	Africa, Asia	Wherever found, except where it is listed as threatened as set forth below	E	3, 5, 114	NA	NA
Leopard		<i>Panthera pardus</i>	Africa, Asia	In Africa, in the wild, south of, and including, the following countries: Gabon, Congo, Zaire, Uganda, Kenya	T	3, 5, 114	NA	17-40(F)
Leopard, clouded		<i>Neofelis nebulosa</i>	Southeast and south-central Asia, Taiwan	..do	E	3, 15	NA	NA
Leopard, snow		<i>Panthera uncia</i>	Central Asia	..do	E	5	NA	NA
Linang, spotted		<i>Promelas pardicolor</i>	Nepal, Assam, Vietnam, Cambodia, Laos, Burma	..do	E	15	NA	NA
Lion, Asiatic		<i>Panthera leo persica</i>	Turkey to India	..do	E	3	NA	NA
Lion, lesser		<i>Neofelis pygmaeus</i>	Indochina	..do	T	16	NA	17-40(G)
Lynx, Spanish		<i>Felis (= Lynx) pardina</i>	Spain, Portugal	..do	E	3	NA	NA
Macaque, Formosan rock		<i>Macaca cyclops</i>	Taiwan	..do	T	16	NA	17-40(G)
Macaque, Japanese		<i>Macaca fuscata</i>	Japan (Shikoku, Kyushu and Honshu islands)	..do	T	16	NA	17-40(G)
Macaque, non-tailed		<i>Macaca silenus</i>	India	..do	E	3	NA	NA
Macaque, stump-tailed		<i>Macaca acroloides</i>	India (Assam) to southern China	..do	T	16	NA	17-40(G)
Macaque, Tonkin		<i>Macaca sinica</i>	Sri Lanka (= Ceylon)	..do	T	16	NA	17-40(G)
Manatee, Amazonian		<i>Trichechus inunguis</i>	South America (Amazon River Basin)	..do	E	3	NA	NA
Manatee, West African		<i>Trichechus senegalensis</i>	West Coast of Africa from Senegal River to Cuanza River, U.S.A. (southeastern), Caribbean Sea, South America	..do	T	62	NA	NA
Manatee, West Indian (Florida)		<i>Trichechus manatus</i>	U.S.A. (southeastern), Caribbean Sea, South America	..do	E	1, 3	17.95(e)	NA
Mandril		<i>Papio sphinx</i>	Equatorial West Africa	..do	E	16	NA	NA
Mangabey, Tana River		<i>Cercopithecus galienus</i>	Kenya	..do	E	3	NA	NA
Mangabey, white-collared		<i>Cercopithecus torquatus</i>	Senegal to Ghana, Nigeria to Gabon	..do	E	16	NA	NA
Mangabey		<i>Felis weedi</i>	U.S.A. (Texas), C. and S. America	..do	E	5	NA	NA
Markhor, Kابل		<i>Capra falconeri megaceros</i>	Afghanistan, Pakistan	..do	E	15	NA	NA
Markhor, straight-horned		<i>Capra falconeri jerdoni</i>	..do	..do	E	15	NA	NA
Marmoset, buff-headed		<i>Callithrix jacchus</i>	Brazil	..do	E	139	NA	NA
Marmoset, cotton-top		<i>Saguinus oedipus</i>	Costa Rica to Colombia	..do	E	16	NA	NA
Marmoset, Goeldi's		<i>Callimico goeldii</i>	Brazil, Colombia, Ecuador, Peru, Bolivia	..do	E	3	NA	NA
Marmoset, Vancouver Island		<i>Marmosa vancouverensis</i>	Canada (Vancouver Island)	..do	E	139	NA	NA

Species		Common name	Scientific name	Historic range	Ventriale population where endangered or threatened	Status	When listed	Critical habitat	Special rules
		Manispiel, eastern jerboa	<i>Antechinus laniger</i>	Australia	do	E	4	NA	NA
		Manispiel-mouse, large desert	<i>Sminthopsis psammophilus</i>	do	do	E	4	NA	NA
		Manispiel-mouse, long-tailed	<i>Sminthopsis longicaudata</i>	do	do	E	4	NA	NA
		Manion, Formosan yellow-throated	<i>Manis flavigula chrysogala</i>	Taiwan	do	E	3	NA	NA
		Monkey, black colobus	<i>Colobus satanas</i>	Equatorial Guinea, People's Republic of Congo, Cameroon, Gabon	do	E	16	NA	NA
		Monkey, black howler	<i>Alouatta pigra</i>	Mexico, Guatemala, Belize	do	T	16	NA	17 4D(c)
		Monkey Diene	<i>Cercopithecus diene</i>	Coastal West Africa	do	E	16	NA	NA
		Monkey, howler	<i>Alouatta palliata</i> (= <i>villosa</i>)	Mexico to South America	do	E	15	NA	NA
		Monkey, L'Hoest's	<i>Cercopithecus thomasi</i>	Upper Eastern Congo Basin, Cameroon	do	E	16	NA	NA
		Monkey, Preuss' red colobus	<i>Colobus badius preussi</i>	Cameroon	do	E	139	NA	NA
		Monkey, proboscis	<i>Nasalis larvata</i>	Borneo	do	E	15	NA	NA
		Monkey, red-backed squirrel	<i>Samia vernalis</i>	Costa Rica, Panama	do	E	3	NA	NA
		Monkey, red-bellied	<i>Cercopithecus erythrops</i>	Western Nigeria	do	E	16	NA	NA
		Monkey, red-eared nose-spotted	<i>Cercopithecus erythrogastrus</i>	Nigeria, Cameroon, Fernando Po	do	E	16	NA	NA
		Monkey, spider	<i>Ateles geoffroyi frontatus</i>	Costa Rica, Nicaragua	do	E	3	NA	NA
		Monkey, spider	<i>Ateles geoffroyi panamensis</i>	Costa Rica, Panama	do	E	3	NA	NA
		Monkey, Taha River red colobus	<i>Colobus rubicinctus</i> (= <i>badius</i>) <i>raivouensis</i>	Kenya	do	E	3, 16	NA	NA
		Monkey, woolly spider	<i>Brachyteles arachnoides</i>	Brazil	do	E	3	NA	NA
		Monkey, yellow-tailed woolly	<i>Leptothrix flavicauda</i>	Andes of northern Peru	do	E	16	NA	NA
		Monkey, Zanzibar red colobus	<i>Colobus iriki</i>	Tanzania	do	E	3	NA	NA
		Mouse, Australian native	<i>Zycomys</i> (= <i>Notomys</i>) <i>pedunculatus</i>	Australia	do	E	15	NA	NA
		Mouse, Field's	<i>Neotomys apollo</i>	do	do	E	4	NA	NA
		Mouse, Gould's	<i>Pseudomys fieldi</i>	do	do	E	8	NA	NA
		Mouse, Key Largo cotton	<i>Panomys gouldi</i>	U.S.A. (Florida)	do	E	131E	NA	NA
		Mouse, New Holland	<i>Pseudomys novaehollandiae</i>	U.S.A. (California)	do	E	4	NA	NA
		Mouse, salt marsh harvest	<i>Reithrodontomys raviventris</i>	U.S.A. (California)	do	E	2	NA	NA
		Mouse, Shark Bay	<i>Pseudomys praecox</i>	Australia	do	E	4	NA	NA
		Mouse, Shortridge's	<i>Pseudomys shortridgei</i>	do	do	E	4	NA	NA
		Mouse, Smoky	<i>Pseudomys rufus</i>	do	do	E	4	NA	NA
		Mouse, western	<i>Pseudomys occidentalis</i>	do	do	E	4	NA	NA
		Mungic, Feet's	<i>Meriacus leae</i>	Northern Thailand, Burma	do	E	50	NA	NA
		Native-cat, eastern	<i>Cyprinus viverrinus</i>	Australia	do	E	6	NA	NA
		Numbil	<i>Myrmecobius fasciatus</i>	do	do	E	4, 6	NA	NA
		Ocelot	<i>Felis pardalis</i>	U.S.A. (TX, AZ) to C. and S. America	do	E	5, 119	NA	NA
		Orangutan	<i>Pongo pygmaeus</i>	Borneo, Sumatra	do	E	3	NA	NA
		Oryx, Arabian	<i>Oryx leucoryx</i>	Arabian Peninsula	do	E	3	NA	NA
		Otter, Cameroon clawless	<i>Aonyx (Paronyx) congica microdon</i>	Cameroon, Nigeria	do	E	3	NA	NA
		Otter, giant	<i>Pteronurus brasiliensis</i>	South America	do	E	3	NA	NA
		Otter, long-tailed	<i>Lutra longicaudis</i> (incl. <i>pleirensis</i>)	do	do	E	3, 15	NA	NA
		Otter, marine	<i>Lutra lutra</i>	Peru south to Straits of Magellan	do	E	15	NA	NA
		Otter, southern river	<i>Lutra procyon</i>	Chile, Argentina	do	E	12	NA	NA
		Otter, southern sea	<i>Enhydra lutris nereis</i>	West coast U.S.A. (WA, OR, CA) south to Mexico (Baja California)	do	T	21	NA	NA
		Panda, giant	<i>Ailuropus melanoleuca</i>	People's Republic of China	do	E	139	NA	NA
		Pangolin (= scaly anteater)	<i>Manis temminckii</i>	Africa	do	E	15	NA	NA
		Panther, Florida	<i>Felis concolor coryi</i>	U.S.A. (LA and AR east to SC and FL)	do	E	1	NA	NA
		Panguala, little	<i>Panguala ingrami sublaesima</i> (formerly <i>P. sublaesima</i>)	Australia	do	E	4	NA	NA
		Panguala, southern	<i>Panguala tenuirostris</i>	do	do	E	4	NA	NA
		Porcupine, thin-spined	<i>Chaetomys subspinosus</i>	Brazil	do	E	3	NA	NA

Species		Scientific name	Historic range	Vertebrate population where endangered or threatened	Sta-tus	When listed	Critical habitat	Special rules
Common name	Species							
Possum, mountain pygmy		<i>Burrhusia parvus</i>	Australia	..do	E	4	NA	NA
Possum, scaly-tailed		<i>Wyulda squamicaudata</i>	..do	..do	E	4	NA	NA
Prairie dog, Mexican		<i>Cynomys mexicanus</i>	Mexico	..do	E	3	NA	NA
Prairie dog, Utah		<i>Cynomys parvidens</i>	U.S.A. (Utah)	..do	E	6, 149	NA	NA
Pronghorn, peninsular		<i>Antilocapra americana peninsularis</i>	Mexico (Baja California)	..do	T	10	NA	NA
Pronghorn, Sonoran		<i>Antilocapra americana sonoriensis</i>	U.S.A. (AZ), Mexico	..do	E	1, 3	NA	NA
Pudu		<i>Pudu pudu</i>	Southern South America	..do	E	15	NA	NA
Puma, Costa Rican		<i>Felis concolor costaricensis</i>	Nicaragua, Panama, Costa Rica	..do	E	15	NA	NA
Quokka		<i>Sotorax brachyurus</i>	Australia	..do	E	6	NA	NA
Rabbit, Ryukyu		<i>Pentalagus furnessi</i>	Japan (Ryukyu Islands)	..do	E	50	NA	NA
Rabbit, volcano		<i>Romerolagus diazi</i>	Mexico	..do	E	3	NA	NA
Rat, false water		<i>Xenomys myricetes</i>	Australia	..do	E	4	NA	NA
Rat, stick-nest		<i>Leporillus capidifer</i>	..do	..do	E	6	NA	NA
Rat, Mbro Bay kangaroo		<i>Dipodomys heermanszi mrobenensis</i>	U.S.A. (California)	..do	E	2	17, 95(a)	NA
Rat-kangaroo, brush-tailed		<i>Beeltonia penicillata</i>	Australia	..do	E	4	NA	NA
Rat-kangaroo, Gaimard's		<i>Beeltonia gaimardi</i>	..do	..do	E	6	NA	NA
Rat-kangaroo, Lesueur's		<i>Beeltonia lesueur</i>	..do	..do	E	4	NA	NA
Rat-kangaroo, plain		<i>Calonymymus campestris</i>	..do	..do	E	4	NA	NA
Rat-kangaroo, Queensland		<i>Beeltonia irapaka</i>	..do	..do	E	4	NA	NA
Rhinoceros, black		<i>Dicerus bicornis</i>	Sub-Saharan Africa	..do	E	87	NA	NA
Rhinoceros, great Indian		<i>Rhinoceros unicornis</i>	India, Nepal	..do	E	4	NA	NA
Rhinoceros, Javan		<i>Rhinoceros sondaicus</i>	Indonesia, Indochina, Burma, Thailand, Sikkim, Bangladesh, Malaysia	..do	E	3	NA	NA
Rhinoceros, northern white		<i>Ceratotherium sumum cottoni</i>	Zaire, Sudan, Uganda, Central African Republic	..do	E	3	NA	NA
Rhinoceros, Sumatran		<i>Dicerorhinus (- Didermoceros) sumatrensis</i>	Bangladesh to Vietnam to Indonesia (Borneo)	..do	E	3	NA	NA
Seal, Mongolian (entelope)		<i>Seiua laticans mongolica</i>	Mongolia	..do	E	15	NA	NA
Seal, white-nosed		<i>Chiropterus albinus</i>	Brazil	..do	E	3	NA	NA
Seal, Caribbean monk		<i>Monachus tropicalis</i>	Caribbean Sea, Gulf of Mexico	..do	E	1, 2, 45	NA	NA
Seal, Hawaiian monk		<i>Monachus schauinslandi</i>	Hawaiian Archipelago	..do	E	18	NA	NA
Seal, Mediterranean monk		<i>Monachus monachus</i>	Mediterranean, Northwest African Coast and Black Sea	..do	E	3	NA	NA
Seal, (= Gaus)		<i>Bos gaurus</i>	Bangladesh, Southeast Asia, India	..do	E	3	NA	NA
Seal, Sumatran		<i>Capricornis sumatrensis</i>	Sumatra	..do	E	15	NA	NA
Seal, Barbary		<i>Felis serval constantini</i>	Algeria	..do	E	3	NA	NA
Sheep		<i>Ovis vignei vignei</i>	Kuwait	..do	E	15	NA	NA
Shou		<i>Canis elephus wolkchi</i>	Tibet, Bhutan	..do	E	3	NA	NA
Siamese		<i>Synhelictus syndactylus</i>	Malaysia, Indonesia	..do	E	15	NA	NA
Skink		<i>Propithecus</i> spp. (all species)	Malaysia Republic (= Madagascar)	..do	E	4	NA	NA
Snake, Brazilian three-toed		<i>Brachypogonias</i>	Brazil	..do	E	3, 4	NA	NA
Solenodon, Cuban		<i>Solenodon cubanus</i>	Cuba	..do	E	3	NA	NA
Solenodon, Haitian		<i>Solenodon paradoxus</i>	Dominican Republic, Haiti	..do	E	3	NA	NA
Squirrel, Delmarva Peninsula fox		<i>Sciurus niger cinereus</i>	U.S.A. (DelMarVa Peninsula to South-east PA)	..do	E	1	NA	NA
Stag, Barbary		<i>Canis elephus barbarus</i>	Tunisia, Algeria	..do	E	3	NA	NA
Stag, Kashmir		<i>Canis elephus hungi</i>	Kashmir	..do	E	3	NA	NA
Sunk, Zanzibar		<i>Neotragus (Neotragus) meschalis meschalis</i>	Zanzibar (and nearby islands)	..do	E	50	NA	NA
Tahr, Arabian		<i>Hemitragus jayakari</i>	Oman	..do	E	50	NA	NA
Tamaraw		<i>Bubalus mindorensis</i>	Philippines	..do	E	4	NA	NA

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Common name	Scientific name							
Tamain, golden-tumped (=golden-headed Tamain), =golden-lion Mar-moset)	<i>Leontideus</i> spp. (all species)	Brazil			E	3	NA	NA
Tamain, pied	<i>Sapinus bicolor</i>	Northern Brazil			E	16	NA	NA
Tamain, white-footed	<i>Sapinus leucopus</i>	Northern Colombia			T	16	NA	17.40(C)
Tapir, Asian	<i>Tapirus indicus</i>	Burma, Laos, Cambodia, Vietnam, Malaysia, Indonesia, Thailand			E	15	NA	NA
Tapir, Brazilian	<i>Tapirus terrestris</i>	Colombia and Venezuela south to Paraguay and Argentina			E	3	NA	NA
Tapir, Central American	<i>Tapirus bairdi</i>	Southern Mexico to Colombia and Ecuador			E	3	NA	NA
Tapir, mountain	<i>Tapirus pinchaque</i>	Colombia, Ecuador and possibly Peru and Venezuela			E	3	NA	NA
Tarsier, Philippine	<i>Tarsius syntyla</i>	Philippines			T	16	NA	17.40(C)
Tiger	<i>Panthera tigris</i>	Temperate and Tropical Asia			E	3, 5	NA	NA
Tiger, Tasmanian (=Thylacine)	<i>Thylacinus thylacinus</i>	Australia			E	3	NA	NA
Uakari (all species)	<i>Cacajao</i> spp. (all species)	Peru, Brazil, Ecuador, Colombia, Venezuela			E	3	NA	NA
Urial	<i>Ovis montanus (=orientalis) ophion</i>	Central Asia			E	15	NA	NA
Viverra	<i>Viverra zibetha</i>	South America (Andes)			E	3	NA	NA
Wallaby, banded hare	<i>Lepus maculatus</i>	Australia			E	4	NA	NA
Wallaby, bridled neck-tailed	<i>Oryzopsis lateralis</i>	Australia			E	4	NA	NA
Wallaby, crescent neck-tailed	<i>Oryzopsis lateralis</i>	Australia			E	4	NA	NA
Wallaby, Parma	<i>Macropus parma</i>	Australia			E	4	NA	NA
Wallaby, Western hares	<i>Lepus wallabyi</i>	Australia			E	4	NA	NA
Wallaby, yellow-footed rock	<i>Petrogale xanthopus</i>	Australia			E	6	NA	NA
Whale, blue	<i>Balaenoptera musculus</i>	Oceanic			E	3	NA	NA
Whale, bowhead	<i>Balaena mysticetus</i>	Oceanic (north latitudes only)			E	3	NA	NA
Whale, finback	<i>Balaenoptera physalus</i>	Oceanic			E	3	NA	NA
Whale, gray	<i>Eschrichtius robustus</i>	North Pacific Ocean; coastal and Bering Sea			E	3	NA	NA
Whale, humpback	<i>Megaptera novaeangliae</i>	Oceanic			E	3	NA	NA
Whale, right	<i>Balaena glacialis</i>	Oceanic			E	3	NA	NA
Whale, Sei	<i>Balaenoptera borealis</i>	Oceanic			E	3	NA	NA
Whale, sperm	<i>Physeter catodon</i>	Oceanic			E	3	NA	NA
Wolf, gray	<i>Canis lupus</i>	Holarctic			E	1, 5, 13, 15, 35	17.95(a)	NA
Wolf, gray	<i>Canis lupus</i>	U.S.A. (48 continental States, except MN), Mexico			E			
Wolf, mened	<i>Canis lupus</i>	U.S.A. (MN)			T	35	17.95(a)	17.40(D)
Wolf, red	<i>Canis rufus</i>	Argentina, Bolivia, Brazil, Paraguay, Uruguay, U.S.A. (southeastern central TX), Australia			E	4	NA	NA
Wombat, hairy-nosed (=Barnard's and Queensland hairy-nosed)	<i>Lasiorhinus krefftii</i> (formerly <i>L. barnardii</i> and <i>L. gilgesiani</i>)	U.S.A. (FL)			E	4, 6	NA	NA
Woodrat, Key Largo	<i>Neotoma floridana smalli</i>	China (Tibet), India			E	13IE	NA	NA
Yak, wild	<i>Bos grunniens</i>	Kenya, Ethiopia, Somalia			T	3	NA	NA
Zebra, Grevy's	<i>Equus grevyi</i>	Namibia, Angola			T	54, 111	NA	NA
Zebra, Hartmann's mountain	<i>Equus zebra hartmannae</i>	South Africa			T	15, 111	NA	NA
Zebra, mountain	<i>Equus zebra zebra</i>	South Africa			E			

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BIRDS								
Akepa, Hawaii (honeycreeper)	<i>Loxia coccyzus coccyzus</i>	U.S.A. (Hawaii)	U.S.A. (Hawaii)	do	E	2	NA	NA
Akepa, Maui (honeycreeper)	<i>Loxia coccyzus ochraceus</i>	do	do	do	E	2	NA	NA
Akialoa, Kauai (honeycreeper)	<i>Hemignathus procops</i>	do	do	do	E	1	NA	NA
Akialoa, Hawaii (honeycreeper)	<i>Hemignathus munro</i> (Wilson)	do	do	do	E	1	NA	NA
Albatross, short-tailed	<i>Diomedea allestria</i>	North Pacific Ocean, Japan, U.S.S.R., U.S.A. (AK, CA, HI, OR, WA)	North Pacific Ocean, Japan, U.S.S.R., U.S.A. (AK, CA, HI, OR, WA)	Entire, except U.S.A.	E	3	NA	NA
Blackbird, yellow-shouldered	<i>Agelaius arithonius</i>	U.S.A. (Puerto Rico)	U.S.A. (Puerto Rico)	Entire	E	17	17 95(b)	NA
Bobwhite, masked (quail)	<i>Colinus virginianus ridgwayi</i>	U.S.A. (Arizona), Mexico (Sonora)	U.S.A. (Arizona), Mexico (Sonora)	do	E	1, 3	NA	NA
Booby, Abbott's	<i>Sula abbotti</i>	Indian Ocean, Christmas Island	Indian Ocean, Christmas Island	do	E	15	NA	NA
Bristlebird, western	<i>Dasyornis brachypterus longirostris</i>	Australia	Australia	do	E	3	NA	NA
Bristlebird, western tufous	<i>Dasyornis broadbentii littoralis</i>	do	do	do	E	15	NA	NA
Bulbul, Mauritian oliveaceous	<i>Hypotaenidia borbonicus olivaceus</i>	Indian Ocean, Mauritius	Indian Ocean, Mauritius	do	E	3	NA	NA
Bullfinch, Sao Miguel (linch)	<i>Pyrrhula pyrrhula murina</i>	Eastern Atlantic Ocean, Azores	Eastern Atlantic Ocean, Azores	do	E	3	NA	NA
Bushwren, New Zealand	<i>Xenicus boggei</i>	New Zealand	New Zealand	do	E	3	NA	NA
Bustard, great Indian	<i>Chonotus nigropus</i>	India, Pakistan	India, Pakistan	do	E	3	NA	NA
Cahow (= Bermuda Petrel)	<i>Pterodroma cahow</i>	North Atlantic Ocean, Bermuda	North Atlantic Ocean, Bermuda	do	E	4	NA	NA
Condor, Andean	<i>Vultur gryphus</i>	Columbia to Chile and Argentina	Columbia to Chile and Argentina	do	E	3	NA	NA
Condor, California	<i>Gymnogyps californianus</i>	U.S.A. (OR, CA), Mexico (Baja California)	U.S.A. (OR, CA), Mexico (Baja California)	do	E	1	17 95(b)	NA
Cool, Hawaiian (= Alae keokeo)	<i>Fulica americana alae</i>	U.S.A. (Hawaii)	U.S.A. (Hawaii)	do	E	2	NA	NA
Colinva, banded	<i>Colinva maculata</i>	Brazil	Brazil	do	E	15	NA	NA
Colinva, white-winged	<i>Xiphobolus altopurpureus</i>	do	do	do	E	15	NA	NA
Crane, black-necked	<i>Grus nigricollis</i>	China (Tibet)	China (Tibet)	do	E	15	NA	NA
Crane, Cuba sandhill	<i>Grus canadensis nesotles</i>	West Indies: Cuba	West Indies: Cuba	do	E	4	NA	NA
Crane, hooded	<i>Grus monacha</i>	Japan, U.S.S.R.	Japan, U.S.S.R.	do	E	3	NA	NA
Crane, Japanese	<i>Grus japonensis</i>	China, Japan, Korea, U.S.S.R.	China, Japan, Korea, U.S.S.R.	do	E	3	NA	NA
Crane, Mississippi sandhill	<i>Grus canadensis pulis</i>	U.S.A. (Mississippi)	U.S.A. (Mississippi)	do	E	6	17 95(b)	NA
Crane, Siberian white	<i>Grus leucogeranus</i>	U.S.S.R. (Siberia) to India, including Iran and China	U.S.S.R. (Siberia) to India, including Iran and China	do	E	4	NA	NA
Crane, white-necked	<i>Grus vipio</i>	Mongolia	Mongolia	do	E	15	NA	NA
Crane, whooping	<i>Grus americana</i>	Canada, U.S.A. (Rocky Mountains east to Carolinas), Mexico	Canada, U.S.A. (Rocky Mountains east to Carolinas), Mexico	do	E	1, 3	17 95(b)	NA
Creeper, Hawaii	<i>Oreomyza (= Loxops) mana</i>	U.S.A. (Hawaii)	U.S.A. (Hawaii)	do	E	10	NA	NA
Creeper, Mohaka (= Kakaewhia)	<i>Oreomyza (= Loxops) fernandis</i>	do	do	do	E	2	NA	NA
Creeper, Oahu (= akauwhio)	<i>Oreomyza (= Loxops) maculata</i>	do	do	do	E	2	NA	NA
Crow, Hawaiian (= alala)	<i>Corvus hawaiiensis (= Troglodytes)</i>	do	do	do	E	1	NA	NA
Cuckoo-shrike, Mauritian	<i>Coqopus (= Coraciina) typicus</i>	Indian Ocean, Mauritius	Indian Ocean, Mauritius	do	E	3	NA	NA
Cuckoo-shrike, Reunion	<i>Coqopus (= Coraciina) newtoni</i>	Indian Ocean, Reunion	Indian Ocean, Reunion	do	E	3	NA	NA
Curassow, razor-billed	<i>Mitu (= Crax) mitu mitu</i>	Brazil (Eastern)	Brazil (Eastern)	do	E	15	NA	NA
Curassow, red-billed	<i>Crax blumenbachii</i>	Brazil	Brazil	do	E	4	NA	NA
Curassow, Trinidad white-headed	<i>Pipilo picile papile</i>	West Indies: Trinidad	West Indies: Trinidad	do	E	3	NA	NA
Curlew, Eskimo	<i>Numenius borealis</i>	Alaska and northern Canada to Argentina	Alaska and northern Canada to Argentina	do	E	1, 3	NA	NA
Dove, cloven-feathered	<i>Drepanoptila holosericea</i>	Southwest Pacific Ocean, New Caledonia	Southwest Pacific Ocean, New Caledonia	do	E	3	NA	NA
Dove, Grenada	<i>Leptoptila wellesi</i>	West Indies: Grenada	West Indies: Grenada	do	E	3	NA	NA
Dove, Palau ground	<i>Gallinucula canifrons</i>	West Pacific Ocean: U.S.A. (Palau Islands)	West Pacific Ocean: U.S.A. (Palau Islands)	do	E	3	NA	NA
Duck, Hawaiian (= holoa)	<i>Anas wyvilliana</i>	U.S.A. (Hawaii)	U.S.A. (Hawaii)	do	E	1	NA	NA
Duck, Laysan	<i>Anas laysonensis</i>	do	do	do	E	15	NA	NA
Duck, pink-headed	<i>Rhodospiza caryophyllacea</i>	India	India	do	E	1	NA	NA
Duck, white-winged wood	<i>Carex scutulata</i>	India, Malaysia, Indonesia, Thailand	India, Malaysia, Indonesia, Thailand	do	E	3	NA	NA

Species		Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Sta-tus	When listed	Critical habitat	Special rules
Eagle, Greenland white-tailed	<i>Haliaeetus albicollis groenlandicus</i>	Eagle, Greenland white-tailed	<i>Haliaeetus albicollis groenlandicus</i>	Greenland and adjacent Atlantic islands	..do.	E	15	NA	NA
Eagle, hairy	<i>Harpia harpyja</i>	Eagle, hairy	<i>Harpia harpyja</i>	Mexico south to Argentina	..do.	E	15	NA	NA
Eagle, Philippine (= monkey-eating)	<i>Pithecophaga jefferyi</i>	Eagle, Philippine (= monkey-eating)	<i>Pithecophaga jefferyi</i>	Philippines	..do.	E	3	NA	NA
Eagle, bald	<i>Haliaeetus leucocapillus</i>	Eagle, bald	<i>Haliaeetus leucocapillus</i>	North America south to northern Mexico	U.S.A. (conterminous States, except WA, OR, MN, WI, MI)	E	1, 34	NA	NA
Eagle, bald	<i>Haliaeetus leucosphaetus</i>	Eagle, bald	<i>Haliaeetus leucosphaetus</i>	..do.	U.S.A. (WA, OR, MN, WI, MI)	T	34	NA	17.41(e)
Eagle, Spanish imperial	<i>Aquila heliaca academi</i>	Eagle, Spanish imperial	<i>Aquila heliaca academi</i>	Spain, Morocco, Algeria	Entire	E	3	NA	NA
Egret, Chinese	<i>Grus leucophaeos</i>	Egret, Chinese	<i>Grus leucophaeos</i>	China, Korea	..do.	E	3	NA	NA
Falcon, American peregrine	<i>Falco peregrinus anatum</i>	Falcon, American peregrine	<i>Falco peregrinus anatum</i>	Nests from central Alaska across north-central Canada to central Mexico, winters south to South America	..do.	E	2, 3, 145	NA	NA
Falcon, Arctic peregrine	<i>Falco peregrinus auratus</i>	Falcon, Arctic peregrine	<i>Falco peregrinus auratus</i>	Nests from northern Alaska to Greenland; winters south to Central and South America	..do.	T	2, 3, 145	NA	NA
Falcon, Eurasian peregrine	<i>Falco peregrinus peregrinus</i>	Falcon, Eurasian peregrine	<i>Falco peregrinus peregrinus</i>	Europe, Eurasia south to Africa and Middleast	..do.	E	15	NA	NA
Falcon, peregrine	<i>Falco peregrinus</i>	Falcon, peregrine	<i>Falco peregrinus</i>	Worldwide, except Antarctica and most Pacific islands	Wherever found in wild in the conterminous U.S.A.	E(S/A)	145	NA	NA
Finch, Laysan (honeycreeper)	<i>Telespiza (= Ptilinopus) cantans</i>	Finch, Laysan (honeycreeper)	<i>Telespiza (= Ptilinopus) cantans</i>	U.S.A. (Hawaii)	Entire	E	1	NA	NA
Finch, Nihoa (honeycreeper)	<i>Telespiza (= Ptilinopus) ultima</i>	Finch, Nihoa (honeycreeper)	<i>Telespiza (= Ptilinopus) ultima</i>	..do.	..do.	E	1	NA	NA
Flycatcher, Euler's	<i>Empidonax euleri johnstonei</i>	Flycatcher, Euler's	<i>Empidonax euleri johnstonei</i>	West Indies; Grenada	..do.	E	3	NA	NA
Flycatcher, Palau (antel)	<i>Rhipidura lepida</i>	Flycatcher, Palau (antel)	<i>Rhipidura lepida</i>	West Pacific Ocean: U.S.A. (Palau islands)	..do.	E	3	NA	NA
Flycatcher, Seychelles paradise	<i>Troglodytes aedon</i>	Flycatcher, Seychelles paradise	<i>Troglodytes aedon</i>	Indian Ocean: Seychelles	..do.	E	3	NA	NA
Flycatcher, 13-line	<i>Pomaria nigra</i>	Flycatcher, 13-line	<i>Pomaria nigra</i>	South Pacific Ocean: Tahiti	..do.	E	3	NA	NA
Flycatcher, 13-line monarch	<i>Monarcha talpacoti</i>	Flycatcher, 13-line monarch	<i>Monarcha talpacoti</i>	Western Pacific Ocean: U.S.A. (Marina islands)	..do.	E	3	NA	NA
Fody, Seychelles (weaver-finch)	<i>Foudia sechellarum</i>	Fody, Seychelles (weaver-finch)	<i>Foudia sechellarum</i>	Indian Ocean: Seychelles	..do.	E	3	NA	NA
Frigatebird, Andrew's	<i>Fregata andrewsi</i>	Frigatebird, Andrew's	<i>Fregata andrewsi</i>	East Indian Ocean	..do.	E	15	NA	NA
Gallinule, Hawaiian (moorhen)	<i>Gallinula chloropus sandwicensis</i>	Gallinule, Hawaiian (moorhen)	<i>Gallinula chloropus sandwicensis</i>	U.S.A. (Hawaii)	..do.	E	1	NA	NA
Geese, Aleutian Canada	<i>Branta canadensis leucoparens</i>	Geese, Aleutian Canada	<i>Branta canadensis leucoparens</i>	U.S.A. (AK, CA, OR, WA), Japan	..do.	E	1, 3	NA	NA
Geese, Hawaiian (= nene)	<i>Nesochen (= Branta) sandwicensis</i>	Geese, Hawaiian (= nene)	<i>Nesochen (= Branta) sandwicensis</i>	U.S.A. (Hawaii)	..do.	E	3	NA	NA
Goshawk, Christmas Island	<i>Accipiter fasciatus natalis</i>	Goshawk, Christmas Island	<i>Accipiter fasciatus natalis</i>	Indian Ocean: Christmas Island	..do.	E	3	NA	NA
Grackle, slender-billed	<i>Quiscalus (= Cassin's) pelagicus</i>	Grackle, slender-billed	<i>Quiscalus (= Cassin's) pelagicus</i>	Mexico	..do.	E	3	NA	NA
Grasswren, Eyrean (flycatcher)	<i>Amnytorus goddardi</i>	Grasswren, Eyrean (flycatcher)	<i>Amnytorus goddardi</i>	Australia	..do.	E	3	NA	NA
Grebe, Australian	<i>Podilymbus podiceps</i>	Grebe, Australian	<i>Podilymbus podiceps</i>	Guatemala	..do.	E	3	NA	NA
Greenshank, Nordmann's	<i>Tinga guttifer</i>	Greenshank, Nordmann's	<i>Tinga guttifer</i>	U.S.S.R., Japan, south to Malaysia, Borneo	..do.	E	15	NA	NA
Guan, horned	<i>Oreophaps derbianus</i>	Guan, horned	<i>Oreophaps derbianus</i>	Guatemala, Mexico	..do.	E	3	NA	NA
Gull, Audubon's	<i>Larus auduboni</i>	Gull, Audubon's	<i>Larus auduboni</i>	Mediterranean Sea	..do.	E	3	NA	NA
Gull, rufic	<i>Larus fuscus</i>	Gull, rufic	<i>Larus fuscus</i>	India, China	..do.	E	15	NA	NA
Hawk, Antiochan island sparrow	<i>Accipiter rimondi pusillus</i>	Hawk, Antiochan island sparrow	<i>Accipiter rimondi pusillus</i>	Indian Ocean: Concord Islands	..do.	E	3	NA	NA
Hawk, Galapagos	<i>Buteo galapagoensis</i>	Hawk, Galapagos	<i>Buteo galapagoensis</i>	Ecuador (Galapagos Island)	..do.	E	3	NA	NA
Hawk, Hawaiian (= ky)	<i>Bubo solitarius</i>	Hawk, Hawaiian (= ky)	<i>Bubo solitarius</i>	U.S.A. (Hawaii)	..do.	E	1	NA	NA
Hermit, hook-billed (hummingbird)	<i>Glauco (= Rhamphodon) dohrni</i>	Hermit, hook-billed (hummingbird)	<i>Glauco (= Rhamphodon) dohrni</i>	Brazil	..do.	E	15	NA	NA
Honeycreeper, crested (= akohakeke)	<i>Palmiste dole</i>	Honeycreeper, crested (= akohakeke)	<i>Palmiste dole</i>	U.S.A. (Hawaii)	..do.	E	1	NA	NA
Hornbill, helmeted	<i>Rhinopilar vigi</i>	Hornbill, helmeted	<i>Rhinopilar vigi</i>	Thailand, Malaysia	..do.	E	15	NA	NA

Species		Common name	Scientific name	Historic range	Venerebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Honeyeater, helmeted	<i>Meliphaga cassidix</i>		Australia	..do.	E	4	NA	NA	
Ibis, Japanese crested	<i>Nipponia nippon</i>		China, Japan, U.S.S.R., Korea	..do.	E	3	NA	NA	
Kagu	<i>Rhynchaelos jubatus</i>		South Pacific Ocean: New Caledonia	..do.	E	3	NA	NA	
Kaitoko (= owl-parrot)	<i>Streptopus habroptilus</i>		New Zealand	..do.	E	3	NA	NA	
Kestrel, Seychelles	<i>Falco tinnunculus</i>		Indian Ocean: Mauritius	..do.	E	3	NA	NA	
Kestrel, Seychelles	<i>Falco araeae</i>		Indian Ocean: Seychelles Islands	..do.	E	3	NA	NA	
Kite, Cuba hook-billed	<i>Chondrohierax uncinatus wissoni</i>		West Indies: Cuba	..do.	E	3	NA	NA	
Kite, Grenada hook-billed	<i>Chondrohierax uncinatus minor</i>		West Indies: Grenada	..do.	E	3	NA	NA	
Kite, Everglade (small kite)	<i>Rosellus scaberrimus plumbeus</i>		U.S.A. (Florida)	..do.	E	1	17.95(b)	NA	
Kokako (waititabird)	<i>Calliastur caninus</i>		New Zealand	..do.	E	3	NA	NA	
Mascaw, glaucous	<i>Anodorhynchus glaucus</i>		Paraguay, Uruguay, Brazil	..do.	E	15	NA	NA	
Mascaw, indigo	<i>Anodorhynchus leari</i>		Brazil	..do.	E	15	NA	NA	
Mascaw, little blue	<i>Cyanopsitta cyana</i>		..do.	..do.	E	15	NA	NA	
Megale, robin, Seychelles (thrush)	<i>Copsychus sechellarum</i>		Indian Ocean: Seychelles Islands	..do.	E	3	NA	NA	
Mallard, red-tailed (cuckoo)	<i>Phaenocarpus pyrrhocapillus</i>		Sw Lanka (= Ceylon)	..do.	E	3	NA	NA	
Mallard, Mariana	<i>Anas australis</i>		West Pacific Ocean: U.S.A. (Guam, Mariana Islands)	..do.	E	23	NA	NA	
Megapode, La Perouse's	<i>Megapodius laevis</i>		West Pacific Ocean: U.S.A. (Palau Island, Mariana Islands)	..do.	E	3	NA	NA	
Megapode, Maleo	<i>Macrocephalon maleo</i>		West Pacific Ocean: U.S.A. (Palau Island, Mariana Islands)	..do.	E	3	NA	NA	
Melbird, Nihos (old world warbler)	<i>Acrocephalus familiaris kingi</i>		Indonesia (Celebes)	..do.	E	1	NA	NA	
Nukupu (honeycreeper)	<i>Homophythus leucurus</i>		U.S.A. (Hawaii)	..do.	E	1, 2	NA	NA	
O'o, Kauai (= O'o 'A'i) (honeycreeper)	<i>Moo barcinus</i>		..do.	..do.	E	1	NA	NA	
O'lehin, Arabian	<i>Strutho carmelus synicus</i>		Jordan, Saudi Arabia	..do.	E	3	NA	NA	
O'mon, West African	<i>Strutho carmelus spatzii</i>		Spanish Sahara	..do.	E	3	NA	NA	
O'u (honeycreeper)	<i>Psittirostra psittacea</i>		U.S.A. (Hawaii)	..do.	E	1	NA	NA	
Owl, Angouan scops	<i>Otus naluus capnodes</i>		Indian Ocean: Comoro Island	..do.	E	3	NA	NA	
Owl, giant scops	<i>Otus gurneyi</i>		Philippines: Mindanao and Mindanao Island	..do.	E	15	NA	NA	
Owl, Palau	<i>Pyroglaux (= Otus) postergans</i>		West Pacific Ocean: U.S.A. (Palau Islands)	..do.	E	3	NA	NA	
Owl, Seychelles	<i>Otus insularis</i>		West Pacific Ocean: U.S.A. (Palau Islands)	..do.	E	3	NA	NA	
Owllet, Morden's (= Sokoke)	<i>Otus renaei</i>		Indian Ocean: Seychelles Islands	..do.	E	3	NA	NA	
Pallid (honeycreeper)	<i>Loxoides (= Psittirostra) bulleus</i>		Kenya	..do.	E	3	NA	NA	
Parakeet, Forbes	<i>Cyanoramphus auriceps forbesi</i>		U.S.A. (Hawaii)	..do.	E	3	17.95(b)	NA	
Parakeet, golden	<i>Aratinga guarouba</i>		New Zealand	..do.	E	3, 15	NA	NA	
Parakeet, golden-shoudered (= hooded)	<i>Psitticholus chrysopserygus</i>		Brazil	..do.	E	4	NA	NA	
Parakeet, Mauritius	<i>Psitticholus echo</i>		Australia	..do.	E	3	NA	NA	
Parakeet, ochre-marked	<i>Pyrrhura orientalis</i>		Indian Ocean: Mauritius	..do.	E	3	NA	NA	
Parakeet, orange-bellied	<i>Neophema chrysogaster</i>		Brazil	..do.	E	3	NA	NA	
Parakeet, parous (= beautiful)	<i>Psitticholus pucheranus</i>		Australia	..do.	E	4	NA	NA	
Parakeet, scarlet-chested (= splendid)	<i>Neophema splendida</i>		..do.	..do.	E	4	NA	NA	
Parakeet, turquoise	<i>Neophema pulchella</i>		..do.	..do.	E	4	NA	NA	
Parrot, Australian	<i>Geopelia striata</i>		Australia	..do.	E	4	NA	NA	
Parrot, Bahaman or Cuban	<i>Geopelia occidentalis</i>		..do.	..do.	E	4	NA	NA	
Parrot, ground	<i>Amazona leucoccephala</i>		West Indies: Cuba, Bahamas, Caymans	..do.	E	3	NA	NA	
Parrot, imperial	<i>Pezoporus wallicus</i>		Australia	..do.	E	3, 15	NA	NA	
Parrot, Puerto Rican	<i>Amazona imperialis</i>		West Indies: Dominica	..do.	E	6	NA	NA	
Parrot, red-browed	<i>Amazona vitiensis</i>		U.S.A. (Puerto Rico)	..do.	E	3	NA	NA	
Parrot, red-capped	<i>Amazona rhodocorytha</i>		Brazil	..do.	E	3	NA	NA	
Parrot, red-necked	<i>Phonocitrus phaea</i>		..do.	..do.	E	15	NA	NA	
Parrot, red-speckled	<i>Amazona brasiliensis</i>		West Indies: Dominica	..do.	E	50	NA	NA	
	<i>Amazona pretrei parire</i>		Brazil, Argentina	..do.	E	15	NA	NA	

Species		Historic range	Vegetate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Parrot, St. Lucia	<i>Amazona verticolor</i>	West Indies: St. Lucia	..do.	E	3	NA	NA
Parrot, St. Vincent	<i>Amazona guifaloti</i>	West Indies: St. Vincent	..do.	E	3	NA	NA
Parrot, thick-billed	<i>Rhyncopsitta pachyrhyncha</i>	Mexico, U.S.A. (AZ, NM)	Mexico	E	3	NA	NA
Parrot, vinaceous-breasted	<i>Amazona vinacea</i>	Brazil	Entire	E	15	NA	NA
Parrotbill, Maui (hoopoe-spar)	<i>Pseudonestes xanthopygus</i>	U.S.A. (Hawaii)	..do.	E	1	NA	NA
Pelican, brown	<i>Pelecanus occidentalis</i>	U.S.A. (Carolina to TX, CA), West Indies, C. and S. America; Coastal Ecuador (Galapagos island)	..do.	E	2, 3	NA	NA
Penguin, Galapagos	<i>Spheniscus mendiculus</i>	U.S.A. (Hawaii)	..do.	E	3	NA	NA
Parrot, Hawaiian dark-rumped	<i>Phorodroma phaeopygia sandwichensis</i>	Burma, China	..do.	E	2, 4, 1	NA	NA
Phoeasant, bar-tailed	<i>Symaticus barzani</i>	Burma, China, India	..do.	E	3	NA	NA
Phoeasant, Blyth's tragopan	<i>Tragopan blythi</i>	China	..do.	E	3	NA	NA
Phoeasant, brown eared	<i>Tragopan caboti</i>	..do.	..do.	E	3	NA	NA
Phoeasant, Cabot's tragopan	<i>Loophophanes thuyai</i>	Vietnam	..do.	E	3	NA	NA
Phoeasant, Chinese monal	<i>Loophanes edwardsi</i>	China	..do.	E	3	NA	NA
Phoeasant, Edwards'	<i>Symaticus edwardsi</i>	..do.	..do.	E	15	NA	NA
Phoeasant, Elliot's	<i>Loophanes imperialis</i>	Taiwan	..do.	E	3	NA	NA
Phoeasant, imperial	<i>Symaticus imperialis</i>	Philippines	..do.	E	3	NA	NA
Phoeasant, Malaco	<i>Polyplectes emphanum</i>	Burma, China, India	..do.	E	3	NA	NA
Phoeasant, Palawan peacock	<i>Loophanes scutleri</i>	Taiwan	..do.	E	3	NA	NA
Phoeasant, Swinford's	<i>Loophanes swinfordi</i>	India, Pakistan	..do.	E	3	NA	NA
Phoeasant, western tragopan	<i>Tragopan melanocephalus</i>	China (Tibet), India	..do.	E	4	NA	NA
Phoeasant, white eared	<i>Crossoptilon crossoptilon</i>	East Atlantic Ocean: Azores	..do.	E	3	NA	NA
Pigeon, Azores wood	<i>Columba palumbus azorea</i>	New Zealand	..do.	E	3	NA	NA
Pigeon, Chatham island	<i>Hemiphysalis novaeseelandiae chathamensis</i>	Philippines	..do.	E	15	NA	NA
Pigeon, Mindoro zone-tailed	<i>Columba mindorensis</i>	U.S.A. (Puerto Rico)	..do.	E	2	NA	NA
Pigeon, Puerto Rican plain	<i>Columba inornata westmori</i>	Argentina	..do.	E	15	NA	NA
Piping-guan, black-fronted	<i>Aplochejaucis</i>	Philippines	..do.	E	15	NA	NA
Pitta, Koeh's	<i>Pitta koehi</i>	New Zealand	..do.	E	3	NA	NA
Plover, New Zealand shore	<i>Thinornis novaeseelandiae</i>	U.S.A. (Hawaii)	..do.	E	10	NA	NA
Po'ouli (hoopoe-spar)	<i>Melanerpes formicivorus</i>	Mexico (Yucatan)	..do.	E	1	NA	NA
Prairie-chicken, Atwater's greater	<i>Tympanuchus cupido atwateri</i>	Mexico (Yucatan)	..do.	E	15	NA	NA
Quail, Mearns's Montezuma	<i>Cyrtonyx montezumae mearnsi</i>	Mexico to Panama	..do.	E	3	NA	NA
Quetzal, resplendent	<i>Pharomachrus mocinno</i>	U.S.A. (California)	..do.	E	2	NA	NA
Rail, Audubon island	<i>Rallus pacificus pacificus</i>	Western Pacific Ocean: U.S.A. (Guam)	..do.	E	2	NA	NA
Rail, California clapper	<i>Rallus longirostris obscoletus</i>	U.S.A. (CA), Mexico (Baja California)	..do.	E	2	NA	NA
Rail, Guam	<i>Rallus everetti</i>	Australia (Lord Howe island)	..do.	E	15	NA	NA
Rail, light-footed clapper	<i>Rallus longirostris leucopus</i>	Mexico, U.S.A. (AZ, CA)	..do.	E	1	NA	NA
Rail, Lord Howe wood	<i>Rallus longirostris yumanensis</i>	Argentina, Bolivia, Peru, Uruguay	..do.	E	3	NA	NA
Rail, Yuma clapper	<i>Pterocnemia pennata</i>	New Zealand	..do.	E	3	NA	NA
Rhea, Darwin's	<i>Petroica traversi</i>	Australia (Norfolk island)	..do.	E	3	NA	NA
Robin, Chatham island	<i>Petroica multicolor multicolor</i>	Cameroun, Gabon	..do.	E	3	NA	NA
Robin, scarlet-breasted (flycatcher)	<i>Pezophilus orea</i>	Africa: Togo to Sierra Leone	..do.	E	3	NA	NA
Rockfowl, grey-necked	<i>Pezophilus grinnoccephalus</i>	Madagascar	..do.	E	3	NA	NA
Rockfowl, white-necked	<i>Urubaornis chinensis</i>	Australia	..do.	E	3	NA	NA
Roller, long-tailed ground	<i>Alcedo coromandus</i>	Philippines	..do.	E	3	NA	NA
Scrub bird, noisy	<i>Coppychus niger caluaniensis</i>	U.S.A. (Hawaii)	..do.	E	10	NA	NA
Shama, Cebu black (thrush)	<i>Puffinus auricularis (formerly puffinus) newelli</i>	U.S.A. (California)	..do.	E	26	NA	NA
Shearwater, Newell's (Townsend's, tor-mary Mary) (= 'A'o)	<i>Larus fulvirostris newelli</i>	South America	..do.	E	15	NA	NA
Srike, San Clemente loggerhead	<i>Cerulea (= Sphenus) cucullatus</i>						
Sialia, red							

Species	Common name	Scientific name	Historic range	Variate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Sparrow, Cape Sable seaside Sparrow, dusky seaside Sparrow, San Clemente sage Sparrow, Pontape mountain Starling		<i>Ammodramus maritimus mirabilis</i> <i>Ammodramus maritimus nigrescens</i> <i>Ammodramus bairdi clemenciae</i> <i>Aplousis pelzelni</i>	U.S.A. (Florida) do. U.S.A. (California) West Pacific Ocean: U.S.A. (Caroline Islands)	do. do. do. do.	E E T E	1 1 26 3	17.95(b) 17.95(b) NA NA	NA NA NA NA
Starling, Rothschild's (myna)		<i>Leucospiza ruficeps</i>	Indonesia (Bali)	do	E	3	NA	NA
Sliki, Hawaiian (= Ae o)		<i>Himatione hawaiiensis</i>	U.S.A. (Hawaii)	do	E	2	NA	NA
Stork, oriental white		<i>Ciconia ciconia boyciana</i>	China, Japan, Korea, U.S.S.R	do	E	3	NA	NA
Stork, wood		<i>Mycteria americana</i>	U.S.A. (CA, AZ, TX, to Carolina), Mexico, Central and South America, GA, SO)	do	E	142	NA	NA
Teal, Campbell Island flightless		<i>Anas sulaensis</i> (= <i>alternans</i>) browni	New Zealand (Campbell Island)	do	E	15	NA	NA
Terrestrial, white-breasted Thrasher, large Kauai Thrush, Mokuai (= orna'o) Thrush, Mokuai (= orna'o) Thrush, New Zealand (waitebird)		<i>Amphispiza bilineata</i> <i>Phainopepla nitens</i> <i>Phainopepla nitens</i> <i>Turnagra capensis</i>	Mexico, U.S.A. (CA) West Indies: St. Lucia, Martinique U.S.A. (Hawaii) do New Zealand	do. do. do. do.	E E E E	2 3 2 3	NA NA NA NA	NA NA NA NA
Tinamou, solitary		<i>Phasianus palmeri</i>	U.S.A. (Hawaii)	do	E	1	NA	NA
Trembler, Martinique Brown (thrasher)		<i>Tyrannus verticalis</i>	Brazil, Paraguay, Argentina	do	E	15	NA	NA
Wanderer, plain (coloured hemipode)		<i>Circus hudsonius</i>	West Indies: Martinique	do	E	3	NA	NA
Warbler (wood), Bachman's		<i>Pentothymus tereticaudus</i>	Australia	do	E	6	NA	NA
Warbler (wood), Barbados yellow		<i>Vermivora bachmani</i>	U.S.A. (Southeastern), Cuba	do	E	1, 3	NA	NA
Warbler (wood), Kiritland's		<i>Dendroica pellicha pellicha</i>	West Indies: Barbados U.S.A. (principally MI), Canada, West Indies: Bahama Islands	do	E	3	NA	NA
Warbler (willow), reed		<i>Dendroica kirtlandi</i>	Western Pacific Ocean: U.S.A. (Mariana Islands)	do	E	3	NA	NA
Warbler (willow), Rodrigues		<i>Acrocephalus luscinius</i>	Mauritius (Rodrigues Islands)	do	E	3	NA	NA
Warbler (willow), Sempier's		<i>Bebernis rodricanus</i>	Mauritius (Rodrigues Islands)	do	E	3	NA	NA
Warbler (willow), Seychelles		<i>Leucophaea semperi</i>	West Indies: St. Lucia	do	E	3	NA	NA
Whippoorwill, Western		<i>Bebernis sechellensis</i>	Indian Ocean: Seychelles Island	do	E	3	NA	NA
Whip-poor-will, Puerto Rican		<i>Psophodes nigropulchra</i>	Australia	do	E	3	NA	NA
White-eye, Norfolk Island		<i>Carpodacus frontalis</i>	U.S.A. (Puerto Rico)	do	E	6	NA	NA
White-eye, Pomape great		<i>Zosterops albogularis</i>	Indian Ocean: Norfolk Islands	do	E	15	NA	NA
White-eye, Seychelles		<i>Fulica longirostris</i> (= <i>sanfordi</i>)	West Pacific Ocean: U.S.A. (Caroline Islands)	do	E	3	NA	NA
Woodpecker, imperial		<i>Zosterops modesta</i>	Indian Ocean: Seychelles	do	E	3	NA	NA
Woodpecker, ivory-billed		<i>Campoplex imperialis</i>	Mexico	do	E	3	NA	NA
Woodpecker, red-coccybead		<i>Campoplex amabilis</i>	U.S.A. (southeastern and southeastern), Cuba	do	E	1, 3	NA	NA
Woodpecker, Tristram's		<i>Picoides</i> (= <i>Dendrocoptes</i>) borealis	U.S.A. (southern and southeastern)	do	E	2	NA	NA
Wren, Guadeloupe house		<i>Dryocopus javensis richardi</i>	Korea	do	E	3	NA	NA
Wren, St. Lucia house		<i>Troglodytes aedon guadeloupensis</i>	West Indies: Guadeloupe	do	E	3	NA	NA
REPTILES		<i>Troglodytes aedon mesoleucus</i>	West Indies: St. Lucia	do	E	3	NA	NA
Alligator, American		<i>Alligator mississippiensis</i>	Southeastern U.S.A.	Wherever found in wild except those areas where listed as threatened as set forth below.	E	1, 11, 51, 60, 113, 134	NA	NA

Species		Common name	Scientific name	Historic range	Venerate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Do	Do								
Do	Do			do	U.S.A. (FL and certain areas of GA and SC, as set forth in 17.42(e)(1)). U.S.A. (LA and TX)	T	20, 47, 51, 60, 134	NA	17.42(e)
Do	Do			do	In captivity wherever found	1(S/A)	11, 47, 51	NA	17.42(e)
		Alligator, Chinese	<i>Alligator sinensis</i>	China	Entire	E	15	NA	NA
		Anole, Culebra Island giant	<i>Anolis roosevelti</i>	U.S.A. (Puerto Rico; Culebra Island)	do	E	25	17.95(G)	NA
		Boa, Jamaican	<i>Epicrates sublineatus</i>	Jamaica	do	E	3	NA	NA
		Boa, Mona	<i>Epicrates monensis monensis</i>	U.S.A. (Puerto Rico)	do	T	33	17.95(G)	NA
		Boa, Puerto Rico	<i>Epicrates inermis</i>	do	do	E	2	NA	NA
		Boa, Round Island [no common name]	<i>Cacoeza diademata</i>	Indian Ocean; Mauritius	do	E	88	NA	NA
		Boa, Round Island [no common name]	<i>Boyeria mombasana</i>	Indian Ocean; Mauritius	do	E	88	NA	NA
		Boa, Virgin Islands tree	<i>Epicrates monensis granti</i>	U.S. and British Virgin Islands	do	E	2, 86	NA	NA
		Caiman, Apogora River	<i>Caiman crocodylus apogorensis</i>	Colombia	do	E	15	NA	NA
		Caiman, black	<i>Melanosuchus niger</i>	Amazon basin	do	E	15	NA	NA
		Caiman, broad-snouted	<i>Caiman latirostris</i>	Brazil, Argentina, Paraguay, Uruguay	do	E	15	NA	NA
		Caiman, Yacare	<i>Caiman crocodylus yacare</i>	Bolivia, Argentina, Peru, Brazil	do	E	3	NA	NA
		Cruckwellie, San Esteban Island	<i>Sauromatias varius</i>	Mexico	do	E	88	NA	NA
		Crocodile, African dwarf	<i>Osteolemus tetraspis tetraspis</i>	West Africa	do	E	15	NA	NA
		Crocodile, African slender-snouted	<i>Crocodylus cataphractus</i>	Western and central Africa	do	E	5	NA	NA
		Crocodile, American	<i>Crocodylus acutus</i>	U.S.A. (FL, Mexico, South America, Central America, Caribbean)	do	E	10, 87	17.95(C)	NA
		Crocodile, Caylon mugger	<i>Crocodylus palustris kumbale</i>	Sri Lanka	do	E	15	NA	NA
		Crocodile, Congo dwarf	<i>Osteolemus tetraspis osborni</i>	Congo River drainage	do	E	15	NA	NA
		Crocodile, Cuban	<i>Crocodylus rhombifer</i>	Cuba	do	E	3	NA	NA
		Crocodile, Morelet's	<i>Crocodylus moreletii</i>	Mexico, Belize, Guatemala	do	E	3	NA	NA
		Crocodile, mugger	<i>Crocodylus palustris palustris</i>	India, Pakistan, Iran, Bangladesh	do	E	15	NA	NA
		Crocodile, Nile	<i>Crocodylus niloticus</i>	Africa	do	E	3	NA	NA
		Crocodile, Orinoco	<i>Crocodylus intermedius</i>	South America; Orinoco River Basin	do	E	3	NA	NA
		Crocodile, Philippine	<i>Crocodylus novaeangariae mandorensis</i>	Philippine Islands	do	E	15	NA	NA
		Crocodile, saltwater (= estuarine)	<i>Crocodylus porosus</i>	Southeast Asia, Australia, Papua New Guinea, Pacific Islands	Entire, except Papua New Guinea	E	87	NA	NA
		Crocodile, Siamese	<i>Crocodylus siamensis</i>	Southeast Asia, Malay Peninsula	Entire	E	15	NA	NA
		Gavial (= gharial)	<i>Gavialis gangeticus</i>	Pakistan, Burma, Bangladesh, India	do	E	3, 15	NA	NA
		Gecko, day	<i>Phelsuma edwardsi</i>	Indian Ocean; Mauritius	do	E	3	NA	NA
		Gecko, Monto	<i>Sphaerodactylus macropithecus</i>	U.S.A. (Puerto Rico)	do	E	125	17.95(C)	NA
		Gecko, Round Island day	<i>Phelsuma guentheri</i>	Indian Ocean; Mauritius	do	E	3	NA	NA
		Gecko, Serpentine Island	<i>Cynodactylus serpensinsula</i>	do	do	T	129	NA	NA
		Iguana, Acklins ground	<i>Cyclura nilex nuchalis</i>	West Indies; Bahamas	do	T	129	NA	NA
		Iguana, Allen's Cay	<i>Cyclura cychura inornata</i>	do	do	T	129	NA	NA
		Iguana, Andros Island ground	<i>Cyclura cychura cychura</i>	do	do	T	129	NA	NA
		Iguana, Anegada ground	<i>Cyclura pinguis</i>	West Indies; British Virgin Islands (Anegada Island)	do	E	3	NA	NA
		Iguana, Berrington land	<i>Conophorus pallidus</i>	Ecuador (Galapagos Island)	do	E	3	NA	NA
		Iguana, Cayman Brac ground	<i>Cyclura nuda caymanensis</i>	West Indies; Cayman Islands	do	T	129	NA	NA

Common name	Species	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Iguana, Cuban ground	<i>Cyclura nubila nubila</i>	Cuba	Cuba	Entire (excluding population introduced in Puerto Rico).	T	129	NA	NA
Iguana, Exuma Island	<i>Cyclura ocyrtura igglesi</i>	West Indies: Bahamas	West Indies: Bahamas	Entire	T	129	NA	NA
Iguana, Fij banded	<i>Brachyophis fasciatus</i>	Pacific: Fiji	Pacific: Fiji	do	E	88	NA	NA
Iguana, Fij crested	<i>Brachyophis vitiensis</i>	do	do	do	E	89	NA	NA
Iguana, Grand Cayman ground	<i>Cyclura nubila lewisi</i>	West Indies: Cayman Islands	West Indies: Cayman Islands	do	E	129	NA	NA
Iguana, Jamaican	<i>Cyclura collei</i>	West Indies: Jamaica	West Indies: Jamaica	do	E	129	NA	NA
Iguana, Mayaguez	<i>Cyclura carinata barrisi</i>	West Indies: Bahamas	West Indies: Bahamas	do	T	129	NA	NA
Iguana, Mona ground	<i>Cyclura stephensi</i>	U.S.A. (Puerto Rico; Mona Island)	U.S.A. (Puerto Rico; Mona Island)	do	T	33	17 95(c)	NA
Iguana, Turks and Caicos	<i>Cyclura cornuta carinata</i>	West Indies: Turks and Caicos Islands	West Indies: Turks and Caicos Islands	do	T	129	NA	NA
Iguana, Walking Island ground	<i>Cyclura rileyi rileyi</i>	West Indies: Bahamas	West Indies: Bahamas	do	E	129	NA	NA
Iguana, White Cay ground	<i>Cyclura rileyi carinata</i>	do	do	do	T	129	NA	NA
Iguana, White Cay ground	<i>Gambusia (= Crotophytus) siku</i>	U.S.A. (CA)	U.S.A. (CA)	do	E	1	NA	NA
Lizard, blunt-nosed leopard	<i>Uma inornata</i>	do	do	do	T	105	17 95(c)	NA
Lizard, Herrero giant	<i>Gallotia simonyi simonyi</i>	Spain (Canary Islands)	Spain (Canary Islands)	do	E	144	NA	NA
Lizard, Herrero giant	<i>Gallotia simonyi</i>	Spain (Canary Islands)	Spain (Canary Islands)	do	T	144	NA	NA
Lizard, Iboca wall	<i>Pogona polyzona</i>	U.S.A. (CA)	U.S.A. (CA)	do	T	26	NA	NA
Lizard, island night	<i>Xantusia (= Akodon) riverstoni</i>	U.S.A. (Virgin Islands; Green Cay, Protestant Cay)	U.S.A. (Virgin Islands; Green Cay, Protestant Cay)	do	T	24	17 95(c)	NA
Lizard, St. Croix ground	<i>Ameliva polops</i>	Iran, Iraq, India, Sri Lanka, Malaysia, Afghanistan, Burma, Vietnam, Thailand	Iran, Iraq, India, Sri Lanka, Malaysia, Afghanistan, Burma, Vietnam, Thailand	do	E	15	NA	NA
Monitor, Bengal	<i>Varanus bengalensis</i>	North Africa to Myanmar, Caspian Sea through U.S.S.R. to Pakistan, North-west India	North Africa to Myanmar, Caspian Sea through U.S.S.R. to Pakistan, North-west India	do	E	15	NA	NA
Monitor, desert	<i>Varanus griseus</i>	Indonesia (Komodo, Rinjia, Pader, and western Flores Island)	Indonesia (Komodo, Rinjia, Pader, and western Flores Island)	do	E	15	NA	NA
Monitor, Komodo Island	<i>Varanus komodoensis</i>	West Pakistan through India to Bangladesh	West Pakistan through India to Bangladesh	do	E	15	NA	NA
Monitor, yellow	<i>Varanus flavescens</i>	Sri Lanka and India	Sri Lanka and India	do	E	15	NA	NA
Python, Indian	<i>Python molurus molurus</i>	Aruba Island (Netherlands Antilles)	Aruba Island (Netherlands Antilles)	do	T	129	NA	NA
Rattlesnake, Anuba Island	<i>Crotalus unicolor</i>	U.S.A. (NM), Mexico	U.S.A. (NM), Mexico	do	T	43	17 95(c)	NA
Rattlesnake, New Mexican ridge-nosed	<i>Crotalus vilkovi obscurus</i>	Indian Ocean: Mauritius	Indian Ocean: Mauritius	do	T	129	NA	NA
Skink, Round Island	<i>Leiolopisma telfairi</i>	U.S.A. (Florida)	U.S.A. (Florida)	do	T	30	NA	NA
Snake, Atlantic salt marsh	<i>Nerodia fasciata fairairi</i>	U.S.A. (AL, FL, GA, MS, SC)	U.S.A. (AL, FL, GA, MS, SC)	do	T	32	NA	NA
Snake, eastern indigo	<i>Drymonodon corais couperi</i>	U.S.A. (California)	U.S.A. (California)	do	T	1	NA	NA
Snake, San Francisco garter	<i>Thamnophis sirtalis talariana</i>	South America: Orinoco and Amazon River basins	South America: Orinoco and Amazon River basins	do	E	3	NA	NA
Snake, Tarantula	<i>Podocnemis expansa</i>	Malaysia, Bangladesh, Burma, India, Indonesia	Malaysia, Bangladesh, Burma, India, Indonesia	do	E	3	NA	NA
Terrapin, river (= Tunbong)	<i>Bolagor tasika</i>	Malaysia, Indonesia	Malaysia, Indonesia	do	E	3	NA	NA
Tortoise, Galapagos	<i>Galapago mydas</i>	Malagasy Republic (= Madagascar)	Malagasy Republic (= Madagascar)	do	E	15	NA	NA
Tortoise, Galapagos	<i>Geochelone nigricollis</i>	Mexico	Mexico	do	E	15	NA	NA
Tortoise, Galapagos	<i>Geochelone pygmaea</i>	U.S.A. (UT, AZ, CA, NV), Mexico	U.S.A. (UT, AZ, CA, NV), Mexico	do	E	48	NA	NA
Tortoise, Galapagos	<i>Geochelone elegans</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone carolinensis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone chelonoidis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone alfredwallersteini</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone saxatilis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone pygmaea</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone elegans</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone carolinensis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone chelonoidis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone nigricollis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone pygmaea</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone saxatilis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone elegans</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone carolinensis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone chelonoidis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone nigricollis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone pygmaea</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone saxatilis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone elegans</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone carolinensis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone chelonoidis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone nigricollis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone pygmaea</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone saxatilis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone elegans</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone carolinensis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone chelonoidis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone nigricollis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone pygmaea</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone saxatilis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone elegans</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone carolinensis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone chelonoidis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone nigricollis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone pygmaea</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone saxatilis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone elegans</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone carolinensis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone chelonoidis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone nigricollis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone pygmaea</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone saxatilis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone elegans</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone carolinensis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone chelonoidis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone nigricollis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone pygmaea</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone saxatilis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone elegans</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone carolinensis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone chelonoidis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone nigricollis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone pygmaea</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone saxatilis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone elegans</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone carolinensis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone chelonoidis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone nigricollis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone pygmaea</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone saxatilis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone elegans</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone carolinensis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone chelonoidis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone nigricollis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone pygmaea</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone saxatilis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone elegans</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone carolinensis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone chelonoidis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone nigricollis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone pygmaea</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone saxatilis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone elegans</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone carolinensis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone chelonoidis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone nigricollis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone pygmaea</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone saxatilis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone elegans</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone carolinensis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone chelonoidis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone nigricollis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone pygmaea</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone saxatilis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone elegans</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone carolinensis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone chelonoidis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone nigricollis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone pygmaea</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone saxatilis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone elegans</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone carolinensis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone chelonoidis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone nigricollis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone pygmaea</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone saxatilis</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone elegans</i>	do	do	do	T	103	17 95(c)	NA
Tortoise, Galapagos	<i>Geochelone carolinensis</i>	do						

Species		Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Historic range							
Turtle, black softshell	Bangladesh	<i>Trionyx nigricans</i>	Bangladesh	Wherever found except where listed as endangered below.	E	15	NA	NA
Turtle, Burmese peacock	Burma	<i>Morenia oncfletii</i>	Burma	Wherever found except where listed as endangered below.	E	15	NA	NA
Turtle, Central American river	Mexico, Belize, Guatemala	<i>Dermatemys mawii</i>	Mexico, Belize, Guatemala	Wherever found except where listed as endangered below.	E	129	NA	NA
Turtle, Cuatro Ciénegas softshell	Mexico	<i>Trionyx ater</i>	Mexico	Wherever found except where listed as endangered below.	E	15	NA	NA
Turtle, geometric	South Africa	<i>Pseudemys geometrica</i> (= <i>Geochelone geometrica</i>)	South Africa	Wherever found except where listed as endangered below.	E	15	NA	NA
Turtle, green sea	Circumglobal in tropical and temperate seas and oceans.	<i>Chelonia mydas</i>	Circumglobal in tropical and temperate seas and oceans.	Wherever found except where listed as endangered below.	T	2, 42	NA	17, 42(b) and Parts 220 and 227.
Turtle, green sea	do.	<i>Chelonia mydas</i>	do.	Breeding colony populations in FL and on Pacific coast of Mexico.	E	2, 42	NA	NA
Turtle, hawksbill sea (= carey)	Tropical seas	<i>Eretmochelys imbricata</i>	Tropical seas	Wherever found except where listed as endangered below.	E	3	17, 95(c)	NA
Turtle, Indian sawback	India	<i>Kachuga leuca leuca</i>	India	Wherever found except where listed as endangered below.	E	15	NA	NA
Turtle, Indian softshell	Pakistan, India	<i>Trionyx gangeticus</i>	Pakistan, India	Wherever found except where listed as endangered below.	E	15	NA	NA
Turtle, Kemp's (= Atlantic) Ridley sea	Tropical and temperate seas in Atlantic Basin.	<i>Leptochelys kempi</i>	Tropical and temperate seas in Atlantic Basin.	Wherever found except where listed as endangered below.	E	4	NA	NA
Turtle, leatherback sea	Tropical, temperate, and subpolar seas	<i>Dermochelys coriacea</i>	Tropical, temperate, and subpolar seas	Wherever found except where listed as endangered below.	E	3	17, 95(c), 226, 71	NA
Turtle, loggerhead sea	Circumglobal in tropical and temperate seas and oceans.	<i>Caretta caretta</i>	Circumglobal in tropical and temperate seas and oceans.	Wherever found except where listed as endangered below.	T	42	NA	17, 42(b) and Parts 220 and 227.
Turtle, Olive (Pacific) Ridley sea	Tropical and temperate seas in Pacific Basin.	<i>Leptochelys olivacea</i>	Tropical and temperate seas in Pacific Basin.	Wherever found except where listed as endangered below.	T	42	NA	17, 42(b) and Parts 220 and 227.
Turtle, Olive (Pacific) Ridley sea	do.	<i>Leptochelys olivacea</i>	do.	Wherever found except where listed as endangered below.	E	42	NA	NA
Turtle, peacock softshell	India, Bangladesh	<i>Trionyx huram</i>	India, Bangladesh	Wherever found except where listed as endangered below.	E	15	NA	NA
Turtle, Plymouth red-bellied	U.S.A. (Massachusetts)	<i>Pseudemys (= Chrysemys) subventris bangsi</i>	U.S.A. (Massachusetts)	Wherever found except where listed as endangered below.	E	90	17, 95(c)	NA
Turtle, short-necked or western swamp	Australia	<i>Pseudemys umbinata</i>	Australia	Wherever found except where listed as endangered below.	E	3	NA	NA
Turtle, spotted pond	North India, Pakistan	<i>Geochelone (= Dermochus) hamiltoni</i>	North India, Pakistan	Wherever found except where listed as endangered below.	E	15	NA	NA
Turtle, three-keeled Asian	Central India to Bangladesh and Burma	<i>Melanochelys (= Geomyza , Nicara) sicanensis</i>	Central India to Bangladesh and Burma	Wherever found except where listed as endangered below.	E	15	NA	NA
Viper, Lar Valley	Iran	<i>Vipera latia</i>	Iran	Wherever found except where listed as endangered below.	E	129	NA	NA
AUSTRALIANS								
Conqi, golden	U.S.A. (Puerto Rico)	<i>Elautherodactylus jasperii</i>	U.S.A. (Puerto Rico)	Wherever found except where listed as endangered below.	T	29	17, 95(d)	NA
Frog, Israeli painted	Israel	<i>Dicoglossus nigriventris</i>	Israel	Wherever found except where listed as endangered below.	E	3	NA	NA
Frog, Panamanian golden	Panama	<i>Alelopus varus zeteki</i>	Panama	Wherever found except where listed as endangered below.	E	15	NA	NA
Frog, Stephen Island	New Zealand	<i>Leiopelma hamiltoni</i>	New Zealand	Wherever found except where listed as endangered below.	E	3	NA	NA
Salamander, Chinese giant	Western China	<i>Andrias davidianus davidianus</i>	Western China	Wherever found except where listed as endangered below.	E	15	NA	NA
Salamander, obscure slender	U.S.A. (California)	<i>Batrachoseps andros</i>	U.S.A. (California)	Wherever found except where listed as endangered below.	E	6	NA	NA
Salamander, Japanese giant	Japan	<i>Andrias davidianus japonicus</i>	Japan	Wherever found except where listed as endangered below.	E	15	NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Sta-tus	When listed	Critical habitat	Special rules
Common name	Scientific name						
Salamander, Red Hills	<i>Pleurophryne rubricincta</i>	U.S.A. (Alabama)	do	T	39	NA	NA
Salamander, San Marcos	<i>Eurycea rana</i>	U.S.A. (Texas)	do	T	98	17,95(d)	17,43(b)
Salamander, Santa Cruz long-toed	<i>Ambystoma macrodactylum zodiacum</i>	U.S.A. (California)	do	E	1	NA	NA
Salamander, Texas blind	<i>Neotomodytes trithorax</i>	U.S.A. (Texas)	do	E	1	NA	NA
Toad, African viviparous	<i>Nectophrynoides</i> spp.	Tanzania, Guinea, Ivory Coast, Cameroon, Liberia, Ethiopia	do	E	15	NA	NA
Toad, Cameroon	<i>Bufo superciliosus</i>	Equatorial Africa	do	E	15	NA	NA
Toad, Houston	<i>Bufo houstonensis</i>	U.S.A. (Texas)	do	E	2	17,95(d)	NA
Toad, Monte Verde	<i>Bufo pernix</i>	Costa Rica	do	E	15	NA	NA
Toad, Wyoming	<i>Bufo hemophysalis bartleri</i>	U.S.A. (WY)	do	E	136	NA	NA
FISHES							
Ale Baik (trout)	<i>Salmo pliocephalus</i>	Turkey	Entire	E	3	NA	NA
Ayudoaki (loach)	<i>Hemimophysa (=Bolsa) curta</i>	Japan	do	E	3	NA	NA
Blindcat, Mexican (catfish)	<i>Pseudis phreatophila</i>	Mexico	do	E	3	NA	NA
Bonytail, Patrangat	<i>Gila robusta Jordan</i>	U.S.A. (Nevada)	do	E	2	NA	NA
Bonytongue, Asian	<i>Scleropages formicoides</i>	Thailand, Indonesia, Malaysia	do	E	15	NA	NA
Catfish [no common name]	<i>Pangasius sanitwongsei</i>	Thailand	do	E	3	NA	NA
Catfish, giant	<i>Pangasiodon gigas</i>	U.S.A. (Alabama)	do	T	28	17,95(e)	NA
Crawfish, Alabama	<i>Speopeltaster poulsoni</i>	U.S.A. (AZ, CA, CO, NV, UT, WY)	do	E	82	NA	NA
Chub, bonytail	<i>Gila elegans</i>	U.S.A. (Oregon)	do	E	124	17,95(e)	NA
Chub, Boxer Lake	<i>Gila bozozubus</i>	U.S.A. (NM), Mexico (Chihuahua)	do	T	132	NA	17,44(g)
Chub, Chinleahut	<i>Gila nigrescens</i>	U.S.A. (AZ, CO, UT, WY)	do	E	1	NA	NA
Chub, flumppack	<i>Gila cypha</i>	U.S.A. (California)	do	E	2	NA	NA
Chub, Mohave tul	<i>Gila bicolor mohavensis (=G. mohavensis)</i>	U.S.A. (TN, VA)	do	T	28	17,95(e)	17,44(c)
Chub, slender	<i>Hybopsis callini</i>	U.S.A. (AL, GA, NC, TN, VA)	do	T	28	17,95(e)	17,44(c)
Chub, spottin	<i>Hybopsis monacha</i>	Turkey	do	E	3	NA	NA
Cock (minnow)	<i>Acrossocheilus handlirschi</i>	U.S.A. (Nevada)	do	E	1	NA	NA
Cut-tail	<i>Chasmistes cyjus</i>	U.S.A. (NV)	do	E	117E, 127E	17,95(e)	NA
Dace, Ash Meadows spotted	<i>Rhinichthys cataractae nevadensis</i>	U.S.A. (Wyoming)	do	E	2	NA	NA
Dace, Kendall Warm Springs	<i>Rhinichthys ocellus thermalis</i>	U.S.A. (Nevada)	do	E	1	NA	NA
Dace, Mosopa	<i>Moxea coriacea</i>	U.S.A. (Mississippi)	do	E	10	NA	17,44(b)
Darter, bayou	<i>Etheostoma rubrum</i>	U.S.A. (Texas)	do	T	2	17,95(e)	NA
Darter, fountain	<i>Etheostoma fonticola</i>	U.S.A. (AR, OK)	do	T	31	17,95(e)	17,44(d)
Darter, leopard	<i>Percina penlandi</i>	U.S.A. (Maryland)	do	E	1	NA	NA
Darter, Maryland	<i>Etheostoma setiferum</i>	U.S.A. (Florida)	do	E	8	NA	NA
Darter, Okaloosa	<i>Etheostoma okaloosae</i>	U.S.A. (AL, TN)	do	T	28	17,95(e)	17,44(c)
Darter, slashwater	<i>Etheostoma boeckingii</i>	U.S.A. (AL, GA, TN)	do	T	12, 150	NA	NA
Darter, small	<i>Percina tanasi</i>	U.S.A. (Alabama)	do	E	2	NA	NA
Darter, watercross	<i>Etheostoma nuchale</i>	U.S.A. (Texas)	do	E	1	NA	NA
Darter, watercross	<i>Gambusia galpei</i>	do	do	E	1	NA	NA
Darter, watercross	<i>Gambusia holbrooki</i>	do	do	E	93	NA	NA
Gambusia, Clear Creek	<i>Gambusia annectans</i>	U.S.A. (NM, TX)	do	E	2	NA	NA
Gambusia, Pease	<i>Gambusia nobilis</i>	U.S.A. (Texas)	do	E	96	17,95(e)	NA
Gambusia, San Marcos	<i>Gambusia georgii</i>	U.S.A. (Nevada)	do	E	1	NA	NA
Killifish, Pahrump	<i>Empetrichthys labis</i>	U.S.A. (Ohio)	do	E	10	NA	NA
Madtom, Scoble	<i>Noturus truttmani</i>	U.S.A. (GA, TN, VA)	do	E	28	17,95(e)	17,44(g)
Madtom, yellowfin	<i>Noturus flavipinnis</i>	Japan	do	T	3	NA	NA
Nekokopji (catfish)	<i>Conostegus ichikawa</i>	Japan	do	E	3	NA	NA

Species		Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	U.S.A. (NV)							
Pupfish, Ash Meadows Amargosa	<i>Cyprinodon nevadensis minckleyi</i>	U.S.A. (NV)		do.	E	117E, 127E, 130	17,95(e)	NA
Pupfish, Comanche Springs	<i>Cyprinodon elegans</i>	U.S.A. (Texas)		do.	E	1	NA	NA
Pupfish, Devils Hole	<i>Cyprinodon diabolus</i>	U.S.A. (Nevada)		do.	E	1	NA	NA
Pupfish, Leon Springs	<i>Cyprinodon bonniei</i>	U.S.A. (Texas)		do.	E	102	17,95(e)	NA
Pupfish, Owens River	<i>Cyprinodon rubrolineatus</i>	U.S.A. (California)		do.	E	1	NA	NA
Pupfish, Warm Springs	<i>Cyprinodon nevadensis pectoralis</i>	U.S.A. (Nevada)		do.	E	2	NA	NA
Squeefish, Colorado	<i>Ptychocheilus icotus</i>	U.S.A. (AZ, CA, CO, NM, NV, UT, WY), Mexico		do.	E	1	NA	NA
Stickleback, unarmored threespine	<i>Gasterosteus aculeatus wilamsoni</i>	U.S.A. (California)		do.	E	2	NA	NA
Sturgeon, shortnose	<i>Acipenser brevirostrum</i>	U.S.A. and Canada (Atlantic Coast)		do.	E	1	NA	NA
Tango, Mayako (Tokyo bittanting)	<i>Tanaka tango</i>	Japan		do.	E	3	NA	NA
Tendek, Ikan (minnow)	<i>Probarbus jullieni</i>	Thailand, Cambodia, Vietnam, Malaysia, Laos		do.	E	15	NA	NA
Topminnow, Gila	<i>Poeciliopsis occidentalis</i>	U.S.A. (AZ, NM), Mexico		do.	E	1	NA	NA
Totaba (pearlout or welefish)	<i>Cyprinodon macdonaldi</i>	Mexico (Gulf of California)		do.	E	45	NA	NA
Trout, Apache (= Arizona)	U.S.A. (Arizona)			do.	T	1, 8	NA	17,44(b)
Trout, Gila	<i>Salmo gairdneri</i>	U.S.A. (New Mexico)		do.	T	1	NA	NA
Trout, greenback cutthroat	<i>Salmo clarki stormi</i>	U.S.A. (Colorado)		do.	T	1, 38	NA	17,44(f)
Trout, Lahontan cutthroat	<i>Salmo clarki henshawi</i>	U.S.A. (CA, NV)		do.	T	2, 8	NA	17,44(b)
Trout, Little Kern golden	<i>Salmo gairdneri whitei</i>	U.S.A. (California)		do.	T	37	17,95(e)	17,44(f)
Trout, Paiute cutthroat	<i>Salmo clarki salweeni</i>	do.		do.	T	1, 8	NA	17,44(b)
Woundfin	<i>Pogonias argenteus</i>	U.S.A. (AZ, NV, UT)		do.	T	2	NA	NA
SNAILS								
Snail, Chittendeno ovate amber	<i>Succinea chittendenensis</i>	U.S.A. (New York)		NA	T	41	NA	NA
Snail, flat-spined three-toothed	<i>Trochospira pleistocenicoides</i>	U.S.A. (West Virginia)		NA	T	41	NA	NA
Snail, Iowa Pleistocene	<i>Discus macrauchenyi</i>	U.S.A. (Iowa)		NA	E	41	NA	NA
Snail, Merus Island tree	<i>Pipusyrta puchherrina</i>	Pacific Ocean, Admiralty Is. (Newus Is.)		NA	E	3	NA	NA
Snail, neoridley	<i>Alopioides clarki nanaulata</i>	U.S.A. (North Carolina)		NA	T	41	NA	NA
Snail, Oak tree	<i>Achatinella</i> spp. (all species)	U.S.A. (Hawaii)		NA	T	108, 112	NA	NA
Snail, painted snailie coiled forest	<i>Angustalimna picta</i>	U.S.A. (Tennessee)		NA	T	41	NA	NA
Snail, Block Island	<i>Orthalicus reevesi</i>	U.S.A. (Florida)		NA	T	41	NA	NA
Snail, Virginia fringed mountain	<i>Polygyrus virginianus</i>	U.S.A. (Virginia)		NA	T	41	NA	NA
CLAMS								
Pearly mussel, Alabama limp	<i>Lampsilis virgescens</i>	U.S.A. (AL, TN)		NA	E	15	NA	NA
Pearly mussel, Appalachian monkeyface	<i>Quadrula sparsa</i>	U.S.A. (TN, VA)		NA	E	35	NA	NA
Pearly mussel, brooding	<i>Conradia castea</i>	do.		NA	E	15	NA	NA
Pearly mussel, Cumberland bean	<i>Milosea</i> (= <i>Microgona</i>) <i>trabalis</i>	U.S.A. (KY, TN)		NA	E	15	NA	NA
Pearly mussel, Cumberland monkeyface	<i>Quadrula intermedia</i>	U.S.A. (AL, TN, VA)		NA	E	15	NA	NA
Pearly mussel, Curtis	<i>Epobiosma</i> (= <i>Dynornis</i>) <i>fibrosina curtsi</i>	U.S.A. (Missouri)		NA	E	15	NA	NA
Pearly mussel, dromedary	<i>Dromus dromas</i>	U.S.A. (TN, VA)		NA	E	15	NA	NA
Pearly mussel, green-blossom	<i>Epobiosma</i> (= <i>Dynornis</i>) <i>torulosa gibberaculum</i>	do.		NA	E	15	NA	NA
Pearly mussel, Higgins' eye	<i>Lampsilis higginsii</i>	U.S.A. (IL, IA, MN, MO, NE, WI)		NA	E	15	NA	NA
Pearly mussel, Nicklin's	<i>Megodonata nicklinensis</i>	Mexico		NA	E	15	NA	NA
Pearly mussel, orange-footed	<i>Pleurobema cooperianus</i>	U.S.A. (AL, IN, IA, KY, OH, PA, TN)		NA	E	15	NA	NA
Pearly mussel, pale lilliput	<i>Toxolima</i> (= <i>Carunculina</i>) <i>cytherealis</i>	U.S.A. (AL, TN)		NA	E	15	NA	NA
Pearly mussel, pink nuchel	<i>Lampsilis orbicula</i>	U.S.A. (AL, IL, IN, KY, MO, OH, PA, TN, WV)		NA	E	15	NA	NA
Pearly mussel, Tampico	<i>Cyrtornalis tampicensis lecomatensis</i>	Mexico		NA	E	15	NA	NA

Species		Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name								
Pearly mussel, tubercled-blossom		<i>Epiblastus (=Dysnomia) tuberosa tolosa</i>	U.S.A. (IL, IN, KY, TN, WV)	NA	E	15	NA	NA
Pearly mussel, turgid-blossom		<i>Epiblastus (=Dysnomia) turgidus</i>	U.S.A. (AL, TN)	NA	E	15	NA	NA
Pearly mussel, white cat's paw		<i>Epiblastus (=Dysnomia) subcata delicata</i>	U.S.A. (IN, MI, OH)	NA	E	15	NA	NA
Pearly mussel, white wartyback		<i>Pteriblastus cacticosus</i>	U.S.A. (AL, IN, TN)	NA	E	15	NA	NA
Pearly mussel, yellow-blossom		<i>Epiblastus (=Dysnomia) florentina</i>	U.S.A. (AL, TN)	NA	E	15	NA	NA
Pigeon, fine-rayed		<i>Fusconeta cuneatus</i>	U.S.A. (AL, TN, VA)	NA	E	16	NA	NA
Pigeon, rough		<i>Pleurobema plicatum</i>	U.S.A. (KY, TN, VA)	NA	E	13	NA	NA
Pigeon, shiny		<i>Fusconeta edgariana</i>	U.S.A. (AL, TN, VA)	NA	E	15	NA	NA
Pocketbook, flat		<i>Polaritika (=Propiera) capax</i>	U.S.A. (AR, IN, MO, OH)	NA	E	15	NA	NA
Rifle shell, tan		<i>Epiblastus walkeri</i>	U.S.A. (KY, TN, VA)	NA	E	27	NA	NA
CRUSTACEANS								
Amphipod, Hay's spring		<i>Syngnathus hayi</i>	U.S.A. (District of Columbia)	NA	E	115	NA	NA
Isopod, Madison Cave		<i>Antrolana ira</i>	U.S.A. (VA)	NA	T	123	NA	17.46(a)
Isopod, Socorro		<i>Thermosphaeroma (=Eucosphaeroma) thermophilus</i>	U.S.A. (New Mexico)	NA	E	36	NA	NA
Shrimp, Kentucky cave		<i>Palaemonias gantieri</i>	U.S.A. (KY)	NA	E	135	17.95(f)	NA
INSECTS								
Beetle, Delta green ground		<i>Elaphrus viridis</i>	U.S.A. (California)	NA	T	100	17.95(i)	NA
Beetle, valley elderberry longhorn		<i>Desmocerus californicus dimorphus</i>	.....do	NA	T	99	17.95(j)	NA
Butterfly, Bahama swallowtail		<i>Papilio andraemon borholoti</i>	U.S.A. (FL, Bahamas)	NA	T	13	NA	17.47(a)
Butterfly, El Segundo blue		<i>Euphilotes (=Stylimeneoides) baillioides allynii</i>	U.S.A. (California)	NA	E	14	NA	NA
Butterfly, Lavage's metalmark		<i>Apodemus morio longaei</i>	.....do	NA	E	14	NA	NA
Butterfly, Lolita blue		<i>Lycaetides epygroparion trifis</i>	.....do	NA	E	14	NA	NA
Butterfly, mission blue		<i>Icaricia icaroides missionensis</i>	.....do	NA	E	14	NA	NA
Butterfly, Oregon shinerip		<i>Speyeria zereza heppalyta</i>	U.S.A. (OR, WA)	NA	T	95	17.95(i)	NA
Butterfly, Palos Verdes blue		<i>Glaucopsyche lygdamus palosverdesensis</i>	U.S.A. (California)	NA	E	96	17.95(j)	NA
Butterfly, San Bruno elfin		<i>Calliphrys mosses heyersi</i>	.....do	NA	E	14	NA	NA
Butterfly, Schaus swallowtail		<i>Papilio aristodemus ponceanus</i>	U.S.A. (Florida)	NA	T	13	NA	17.47(a)
Butterfly, Smith's blue		<i>Euphilotes (=Stylimeneoides) anoptes smithi</i>	U.S.A. (California)	NA	E	14	NA	NA
Moth, Kern premrose sphinx		<i>Euproscopus eusterpe</i>	.....do	NA	T	91	NA	NA

#—Indicates FR where species was deleted; retiring of the species is indicated by subsequent number(s).
E—Indicates Emergency rule publication (see FR document for effective dates); subsequent number(s) indicate FR final rule, if applicable.
CORRECTION NOTE: For "When listed" citations, see list following.

1—32 FR 4001; March 11, 1967.
 2—35 FR 16047; October 13, 1970.
 3—35 FR 8485; June 2, 1970.
 4—35 FR 16320; December 2, 1970.
 5—37 FR 6476; March 30, 1972.
 6—38 FR 14678; June 4, 1973.
 7—38 FR 44991; December 30, 1974.
 8—40 FR 29884; July 16, 1975.
 9—40 FR 31738; July 28, 1975.
 10—40 FR 44151; September 25, 1975.
 11—40 FR 44416; September 28, 1975.
 12—40 FR 47506; October 9, 1975.
 13—41 FR 17740; April 28, 1976.
 14—41 FR 22044; June 1, 1976.
 15—41 FR 24064; June 14, 1976.
 16—41 FR 45983; October 19, 1976.
 17—41 FR 51021; November 19, 1976.
 18—41 FR 51612; November 23, 1976.
 19—41 FR 53034; December 3, 1976.
 20—42 FR 2076; January 10, 1977.
 21—42 FR 2968; January 14, 1977.
 23—42 FR 28137; June 2, 1977.
 24—42 FR 28545; June 3, 1977.
 25—42 FR 37373; July 21, 1977.
 26—42 FR 40685; August 11, 1977.
 27—42 FR 42353; August 23, 1977.
 28—42 FR 45526; September 9, 1977.
 29—42 FR 56755; November 11, 1977.
 30—42 FR 80745; November 29, 1977.
 31—43 FR 3715; January 27, 1978.
 32—43 FR 4028; January 31, 1978.
 33—43 FR 4621; February 3, 1978.
 34—43 FR 6233; February 14, 1978.
 35—43 FR 9812; March 9, 1978.
 36—43 FR 12691; March 27, 1978.

37—43 FR 15429; April 13, 1978.
 38—43 FR 16345; April 18, 1978.
 40—43 FR 20504; May 12, 1978.
 41—43 FR 28932; July 3, 1978.
 42—43 FR 32806; July 28, 1978.
 43—43 FR 34479; August 4, 1978.
 44—43 FR 44812; September 28, 1978.
 45—44 FR 21286; April 10, 1979.
 46—44 FR 23064; April 17, 1979.
 48—44 FR 29480; May 21, 1979.
 50—44 FR 37126; June 25, 1979.
 51—44 FR 37132; June 25, 1979.
 52—44 FR 42911; July 20, 1979.
 54—44 FR 49220; August 21, 1979.
 55—44 FR 54007; September 17, 1979.
 60—44 FR 58064; October 12, 1979.
 85—44 FR 69206; November 30, 1979.
 86—44 FR 70877; December 7, 1979.
 87—44 FR 75078; December 18, 1979.
 88—45 FR 18010; March 20, 1980.
 90—45 FR 21833; April 2, 1980.
 91—45 FR 24060; April 8, 1980.
 92—45 FR 27713; April 23, 1980.
 93—45 FR 28722; April 30, 1980.
 94—45 FR 35823; May 28, 1980.
 95—45 FR 44935; July 2, 1980.
 96—45 FR 44939; July 2, 1980.
 97—45 FR 47352; July 14, 1980.
 98—45 FR 47355; July 14, 1980.
 99—45 FR 52803; August 8, 1980.
 100—45 FR 52807; August 8, 1980.
 102—45 FR 54678; August 15, 1980.
 103—45 FR 55654; August 20, 1980.
 105—45 FR 63612; September 25, 1980.
 106—45 FR 65132; October 1, 1980.

108—46 FR 3178; January 13, 1981.
 111—46 FR 11665; February 10, 1981.
 112—46 FR 40025; August 6, 1981.
 113—46 FR 40664; August 10, 1981.
 114—47 FR 4204; January 28, 1982.
 115—47 FR 5423; February 5, 1982.
 117—47 FR 19995; May 10, 1982.
 119—47 FR 31670; July 21, 1982.
 123—47 FR 43701; October 4, 1982.
 124—47 FR 43962; October 5, 1982.
 125—47 FR 46893; October 15, 1982.
 127—48 FR 612; January 5, 1983.
 128—48 FR 1728; January 14, 1983.
 129—48 FR 28464; June 22, 1983.
 130—48 FR 40186; September 2, 1983.
 131—48 FR 43043; September 21, 1983.
 132—48 FR 46057; October 11, 1983.
 134—48 FR 46336; October 12, 1983.
 135—48 FR 48342; October 12, 1983.
 138—48 FR 49249; October 25, 1983.
 138—49 FR 1994; January 17, 1984.
 139—49 FR 2783; January 23, 1984.
 142—49 FR 7335; February 26, 1984.
 143—49 FR 7394; February 26, 1984.
 144—49 FR 7398; February 26, 1984.
 145—49 FR 10528; March 20, 1984.
 146—49 FR 14356; April 11, 1984.
 149—49 FR 22334; May 29, 1984.
 150—49 FR 27514; July 5, 1984.

Effective Date Note: At 46 FR 43043, Sept. 21, 1983, the Key Largo cotton mouse and Key Largo woodrat were added by an emergency rule to the List of Endangered and Threatened Wildlife. This emergency determination was effective September 21, 1983, and expired May 18, 1984.

§ 17.12 Endangered and threatened plants.

(a) The list in this section contains the names of all species of plants which have been determined by the Services to be Endangered or Threatened. It also contains the names of species of plants treated as Endangered or Threatened because they are sufficiently similar in appearance to Endangered or Threatened species (see § 17.50 *et seq.*).

(b) The columns entitled "Scientific Name" and "Common Name" define the species of plant within the meaning of the Act. Although common names are included, they cannot be relied upon for identification of any specimen, since they may vary greatly in local usage. The Services shall use the most recently accepted scientific name. In cases in which confusion might arise, a synonym(s) will be provided in parentheses. The Services shall rely to the extent practicable on the *International Code of Botanical Nomenclature*.

(c) In the "Status" column the following symbols are used: "E" for Endangered, "T" for Threatened, and "E" or "T" (S/A)" for similarity of appearance species.

(d) The other data in the list are nonregulatory in nature and are provided for the information of the reader. In the annual revision and compilation of this Title, the following information may be amended without public notice: the spelling of species' names, historical range, footnotes, references to certain other applicable portions of this Title, synonyms, and more current names. In any of these revised entries, neither the species, as defined in paragraph (b) of this section, nor its status may be changed without following the procedures of Part 424 of this Title.

(e) The "Historic Range" indicates the known general distribution of the species or subspecies as reported in the current scientific literature. The present distribution may be greatly reduced from this historic range. This column does not imply any limitation on the application of the prohibitions in the Act or implementing rules. Such prohibitions apply to all individuals of the plant species, wherever found.

(f)(1) A footnote to the Federal Register publication(s) listing or reclassifying a species is indicated under the column "When Listed." Footnote numbers to §§ 17.11 and 17.12

are in the same numerical sequence, since plants and animals may be listed in the same Federal Register document. That document, at least since 1973, includes a statement indicating the basis for the listing, as well as the effective date(s) of said listing.

(2) The "Special Rules" and "Critical Habitat" columns provide a cross reference to other sections in Parts 17, 222, 228, or 227. The term "NA" [not applicable] appearing in either of these two columns indicates that there are no special rules and/or Critical Habitat for that particular species. However, all other appropriate rules in Parts 17, 217-227, and 402 still apply to that species. In addition, there may be other rules in this Title that relate to such plants, e.g., port-of-entry requirements. It is not intended that the references in the "Special Rules" column list all the regulations of the two Services which might apply to the species or to the regulations of other Federal agencies or State or local governments.

(g) The listing of a particular taxon includes all lower taxonomic units [see § 17.11(g) for examples].

(h) The "List of Endangered and Threatened Plants" is provided below:

Species	Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Agavaceae—Agave family:							
	<i>Agave arizonica</i>	Arizona agave	U.S.A. (AZ)	E	147	NA	NA
Alismaceae—Water-plantain family:							
	<i>Sagittaria fasciculata</i>	Bunched arrowhead	U.S.A. (NC, SC)	E	53	NA	NA
Asteraceae—Aster family:							
	<i>Bidens cuneata</i>	Cuneate bidens	U.S.A. (HI)	E	141	NA	NA
	<i>Dysodia leptocaula</i>	Ashy dogweed	U.S.A. (TX)	E	152	NA	NA
	<i>Echinocia tennesseensis</i>	Tennessee purple coneflower	U.S.A. (TN)	E	48	NA	NA
	<i>Lipochloa venosa</i>	None	U.S.A. (HI)	E	73	NA	NA
	<i>Sonchecio franciscanus</i>	San Francisco Peaks groundsel	U.S.A. (AZ)	T	137	17 96(a)	NA
	<i>Stephanomeria malheurensis</i>	Malheur wire-leaved	U.S.A. (OR)	E	126	17 96(a)	NA
Barberraceae—Barberr family:							
	<i>Mahonia sonnei</i> (= <i>Berberis s.</i>)	Truckee barberry	U.S.A. (CA)	E	76	NA	NA
Bellulaceae—Birch family:							
	<i>Betula obovata</i>	Virginia round-leaf birch	U.S.A. (VA)	E	39	NA	NA
Brassicaceae—Mustard family:							
	<i>Arabis monticola</i>	McDonald's rock-cress	U.S.A. (CA)	E	44	NA	NA
	<i>Erysimum capitatum</i> var. <i>angustifolium</i>	Contra Costa wallflower	U.S.A. (CA)	E	39	17 96(a)	NA
Cactaceae—Cactus family:							
	<i>Ancistrocactus tobuachi</i> (= <i>Echinocactus l.</i> , <i>Mammillaria l.</i>)	Tobusch fishhook cactus	U.S.A. (TX)	E	80	NA	NA
	<i>Cylindropuntia</i>	Key tree-cactus	U.S.A. (FL, Cuba)	E	153	NA	NA
	<i>Coryphantha mitis</i> (= <i>C. nelsonii</i> , <i>Escobaria n.</i> , <i>Mammillaria n.</i>)	Nettle cory cactus	U.S.A. (TX)	E	81	NA	NA
	<i>Coryphantha ramulosa</i>	Bunched cory cactus	U.S.A. (TX), Mexico (Coahuila)	T	77	NA	NA
	<i>Coryphantha sneedei</i> var. <i>leei</i> (= <i>Escobaria l.</i> , <i>Mammillaria l.</i>)	Lee pincushion cactus	U.S.A. (NM)	T	61	NA	NA
	<i>Coryphantha sneedei</i> var. <i>sneedei</i> (= <i>Escobaria s.</i> , <i>Mammillaria s.</i>)	Sneed pincushion cactus	U.S.A. (TX, NM)	E	82	NA	NA
	<i>Echinocactus horizontalis</i> var. <i>nicholii</i>	Nichol's Turk's head cactus	U.S.A. (AZ)	E	71	NA	NA
	<i>Echinocereus engelmannii</i> var. <i>purpureus</i>	Purple-spined hedgehog cactus	U.S.A. (UT)	E	58	NA	NA
	<i>Echinocereus fendleri</i> var. <i>kuenzleri</i> (= <i>E. kuenzleri</i> , <i>E. hempelei</i> of authors, not Fobes)	Kuenzler hedgehog cactus	U.S.A. (NM)	E	70	NA	NA
	<i>Echinocereus lloydii</i> (= <i>E. costeri</i> var. <i>l.</i>)	Lloyd's hedgehog cactus	U.S.A. (TX)	E	67	NA	NA
	<i>Echinocereus reichenbachii</i> var. <i>aberti</i> (= <i>E. melanocentrus</i>)	Black lace cactus	U.S.A. (AZ)	E	88	NA	NA
	<i>Echinocereus triglochidiatus</i> var. <i>arizonicus</i> (= <i>E. arizonicus</i>)	Arizona hedgehog cactus	U.S.A. (AZ)	E	82	NA	NA
	<i>Echinocereus triglochidiatus</i> var. <i>inermis</i> (= <i>E. coccoineus</i> var. <i>l.</i> , <i>E. phoeniceus</i> var. <i>l.</i>)	Spineless hedgehog cactus	U.S.A. (CO, UT)	E	83	NA	NA
	<i>Echinocereus viridiflorus</i> var. <i>diversi</i> (= <i>E. diversi</i>)	Davis' green pilaya	U.S.A. (TX)	E	81	NA	NA
	<i>Neolloydia manzanita</i> (= <i>Echinocactus m.</i> , <i>Echinomastus m.</i>)	Lloyd's Manzanita cactus	U.S.A. (TX), Mexico (Coahuila)	T	77	NA	NA
	<i>Pediocactus bradyi</i> (= <i>Tournefortia b.</i>)	Brady pincushion cactus	U.S.A. (AZ)	E	63	NA	NA
	<i>Pediocactus knowltonii</i> (= <i>P. bradyi</i> var. <i>k.</i> , <i>Tournefortia k.</i>)	Knowlton cactus	U.S.A. (NM, CO)	E	72	NA	NA
	<i>Pediocactus peeblesianus</i> var. <i>peeblesianus</i> (= <i>Echinocactus p.</i> , <i>Navajo p.</i> , <i>Tournefortia p.</i> , <i>Utahia p.</i>)	Peebles Navajo cactus	U.S.A. (AZ)	E	89	NA	NA
	<i>Pediocactus sileri</i> (= <i>Echinocactus s.</i> , <i>Utahia s.</i>)	Siler pincushion cactus	U.S.A. (AZ, UT)	E	64	NA	NA
	<i>Scleroocactus glaucus</i> (= <i>Echinocactus g.</i> , <i>E. subglaucus</i> , <i>E. whipplei</i> var. <i>g.</i> , <i>Pediocactus g.</i> , <i>S. franklinii</i> , <i>S. whipplei</i> var. <i>g.</i>)	Utah Basin hookless cactus	U.S.A. (CO, UT)	T	58	NA	NA

Species		Common name	Historic range	Sta- tus	When listed	Critical habitat	Special rules
Scientific name							
<i>Scleroocactus missus-verdes</i> (= <i>Coleoides m.</i> , <i>Echinocactus m.</i> , <i>Pedocactus m.</i>)		Mesa Verde cactus.....	U.S.A. (CO, NM)	T	75	NA	NA
<i>Scleroocactus wrightiae</i> (= <i>Pedocactus w.</i>)		Wright fishhook cactus.....	U.S.A. (UT)	E	58	NA	NA
Caryophyllaceae—Pink family: <i>Schladia adamsiana</i>		Diamond Head schiedee.....	U.S.A. (HI)	E	141	NA	NA
Callitaceae—Rockrose family: <i>Hudsonia montana</i>		Mountain golden heather.....	U.S.A. (NC)	T	107	17.98(a)	NA
Crasulaceae—Stonecrop family: <i>Dudleya fistulata</i>		Santa Barbara Island liveforever.....	U.S.A. (CA)	E	38	NA	NA
Cupressaceae—Cypress family: <i>Platyaspis compressa</i>		Chilean false larch (= <i>alerce</i>).....	Chile, Argentina	T	79	NA	NA
Ericaceae—Heath family: <i>Arctostaphylos purpurea</i> var. <i>reversif</i> (= <i>A. hookeri</i> ssp. <i>reversif</i>)		Presidio (=Raven's) manzanita.....	U.S.A. (CA)	E	65	NA	NA
Rhododendron <i>chapmanii</i>		Chapman rhododendron.....	U.S.A. (FL)	E	47	NA	NA
Euphorbiaceae—Spurge family: <i>Euphorbia strobilifera</i> var. <i>maleucana</i>		Ewa Plains 'akoko.....	U.S.A. (HI)	E	120	NA	NA
Fabaceae—Pea family: <i>Astragalus parviflorus</i> <i>Epipactis arachnifera</i> <i>Lotus dendroideus</i> ssp. <i>aristatus</i> (= <i>L. scoparius</i> ssp. <i>l.</i>) <i>Vicia menziesii</i>		Hydberg milk-vetch..... Heavy rattailweed..... San Clemente Island broom..... Hawaiian vetch.....	U.S.A. (UT) U.S.A. (GA) U.S.A. (CA) U.S.A. (HI)	T E E E	38 38 28 38	NA NA NA NA	NA NA NA NA
Hydrophyllaceae—Waterleaf family: <i>Phacelia argentea</i> <i>Phacelia formosula</i>		Clay phacelia..... North Park phacelia.....	U.S.A. (UT) U.S.A. (CO)	E E	44 121	NA NA	NA NA
Lamiaceae—Mint family: <i>Haplostachys leptostachya</i> var. <i>angustifolia</i> <i>Hedeoma pappulatum</i> <i>Hedeoma tomentosum</i> <i>Popovya abramsii</i> <i>Stemogyne angustifolia</i> var. <i>angustifolia</i>		None..... Nickleberry pennyroyal..... Toddler's pennyroyal..... San Diego mesa mint..... None.....	U.S.A. (HI) U.S.A. (TX, NM) U.S.A. (NM) U.S.A. (CA) U.S.A. (HI)	E T E E E	73 118 110, 112 44 73	NA 17.98(a) 17.98(a) NA NA	NA NA NA NA NA
Uliaceae—Uly family: <i>Hesperocallis flava</i> <i>Tritium peruvianum</i>		Harper's beauty..... Persistent trifolium.....	U.S.A. (FL) U.S.A. (GA, SC)	E E	57 39	NA NA	NA NA
Melastomaceae—Mallow family: <i>Cleome scabra</i> <i>Rokia cookii</i> <i>Melastomum clementinum</i>		Texas poppy-mallow..... Cook's tobacco..... San Clemente Island luth-mallow.....	U.S.A. (TX) U.S.A. (HI) U.S.A. (CA)	E E E	108, 112 74 26	NA NA NA	NA NA NA
Nyctaginaceae—Four-o'clock family: <i>Mirabilis maculata</i>		MacFarlane's four-o'clock.....	U.S.A. (ID, OR)	E	66	NA	NA
Onagraceae—Evening-primrose family: <i>Oenothera avita</i> ssp. <i>evrekenza</i> <i>Oenothera diffracta</i> ssp. <i>howellii</i>		Eureka Valley evening-primrose..... Antioch Dunes evening-primrose.....	U.S.A. (CA) do	E E	38 38	NA 17.98(a)	NA NA

Species		Common name	Historic range	Sta- tus	When listed	Critical habitat	Special rules
Scientific name	Species						
Orobanchaceae—Orchid family: <i>Isotria medeoloides</i>		Small whorled pogonia	Canada (Ont.), U.S.A. (CT, IL, MA, MD, ME, MI, MO, NC, NH, NJ, NY, PA, RI, SC, VA, VT), U.S.A. (TX)	E	122	NA	NA
<i>Spiranthes patris</i>		Navasota ladies'-tresses	U.S.A. (TX)	E	116	NA	NA
Papaveraceae—Poppy family: <i>Argemone humilis</i>		Dwarf bear-poppy	U.S.A. (UT)	E	78	NA	NA
Penaceae—Pine family: <i>Ades guatemalensis</i>		Guatemalan fir (= pinabete)	Mexico, Guatemala, Honduras, El Salvador	T	84	NA	NA
Poaceae—Grass family: <i>Tucloma macrostyla</i> (= <i>Orcuttia</i> m.), <i>Panicum caprii</i> , <i>Syntherisma alexandriae</i> , <i>Zizania texana</i>		Solano grass, Carriera panicgrass, Eureka Dune grass, Texas wild-rice	U.S.A. (CA), U.S.A. (HI), do U.S.A. (TX)	E E E E	44 133 39 39	NA 17.96(a) NA 17.96(a)	NA NA NA NA
Polygonaceae—Buckwheat family: <i>Eriogonum gypsophilum</i> , <i>Eriogonum peltophyllum</i>		Gypsum wild-buckwheat, Clay-loving wild-buckwheat	U.S.A. (NM), U.S.A. (CO)	T E	110, 112 151	17.96(a) 17.96(a)	NA NA
Ranunculaceae—Buttercup family: <i>Aconitum noveboracense</i>		Northern wild monkshood	U.S.A. (IA, NY, OH, WI), U.S.A. (CA)	T E	39 26	NA NA	NA NA
<i>Delphinium kirkense</i>		San Clemente Island larkspur	U.S.A. (CA)	E	26	NA	NA
Rosaceae—Rose family: <i>Cowania subnigrata</i> , <i>Potentilla robbinsiana</i>		Arizona cliffrose, Robbins' cinquefoil	U.S.A. (AZ), U.S.A. (NH, VT)	E E	148 164	NA 17.96(a)	NA NA
Sarracenaceae—Pitcher plant family: <i>Sarracenia oreophila</i>		Green pitcher plant	U.S.A. (AL, GA, TN)	E	58, 88	NA	NA
Scrophulariaceae—Snapdragon family: <i>Cassipoula grisea</i> , <i>Cordylanthus maritimus</i> ssp. <i>maritimus</i> , <i>Podoclytus turkeanae</i>		San Clemente Island Indian paintbrush, Salt marsh bird's-beak, Furbush loosewort	U.S.A. (CA), Mexico (Baja California), U.S.A. (ME), Canada (New Brunswick)	E E E	26 44 39	NA NA NA	NA NA NA
Taucaeae—Yew family: <i>Torreya taxifolia</i>		Florida torrey	U.S.A. (FL, GA)	E	140	NA	NA

E—Indicates Emergency rule publication (see FR document for effective dates); subsequent number(s) indicate FR final rule, if applicable.
EDITORIAL NOTE: For "when listed" citations, see list following.

28—42 FR 40685; August 11, 1977.
 39—43 FR 17918; April 26, 1978.
 44—43 FR 44812; September 28, 1978.
 47—44 FR 24250; April 24, 1979.
 49—44 FR 32805; June 6, 1979.
 53—44 FR 43701; July 25, 1979.
 56—44 FR 54923; September 21, 1979.
 57—44 FR 56863; October 2, 1979.
 58—44 FR 56868; October 11, 1979.
 59—44 FR 56870; October 11, 1979.
 61—44 FR 61558; October 25, 1979.
 62—44 FR 61558; October 25, 1979.
 63—44 FR 61786; October 28, 1979.
 64—44 FR 61786; October 26, 1979.
 65—44 FR 61911; October 26, 1979.
 66—44 FR 61913; October 26, 1979.
 67—44 FR 61918; October 26, 1979.
 68—44 FR 61920; October 26, 1979.
 69—44 FR 61924; October 26, 1979.
 70—44 FR 61927; October 28, 1979.
 71—44 FR 61929; October 28, 1979.
 72—44 FR 62246; October 28, 1979.
 73—44 FR 62469; October 30, 1979.
 74—44 FR 62471; October 30, 1979.
 75—44 FR 62474; October 30, 1979.
 76—44 FR 64247; November 6, 1979.
 77—44 FR 64250; November 6, 1979.
 78—44 FR 64252; November 6, 1979.
 78—44 FR 64733; November 7, 1979.
 80—44 FR 64738; November 7, 1979.
 81—44 FR 64740; November 7, 1979.
 82—44 FR 64743; November 7, 1979.
 83—44 FR 64746; November 7, 1979.

84—44 FR 65005; November 8, 1979.
 89—45 FR 16629; March 24, 1980.
 104—45 FR 81944; September 17, 1980.
 107—45 FR 69380; October 20, 1980.
 109—46 FR 3184; January 13, 1981.
 110—46 FR 5730; January 19, 1981.
 112—46 FR 40025; August 6, 1981.
 116—47 FR 18539; May 6, 1982.
 116—47 FR 30440; July 13, 1982.
 120—47 FR 38846; August 24, 1982.
 121—47 FR 38540; September 1, 1982.
 122—47 FR 38927; September 10, 1982.
 126—47 FR 50885; November 10, 1982.
 133—48 FR 46332; October 12, 1983.
 137—48 FR 52747; November 22, 1983.
 140—49 FR 2786; January 23, 1984.
 141—49 FR 6102; February 17, 1984.
 147—49 FR 21056; May 18, 1984.
 148—49 FR 22329; May 29, 1984.
 151—49 FR 28565; July 13, 1984.
 152—49 FR 29234; July 19, 1984.
 153—49 FR 29237; July 19, 1984.

WILDLIFE REMOVED FROM THE ENDANGERED AND THREATENED SPECIES LIST

The following list of wildlife removed from the List of Endangered and Threatened Wildlife (50 CFR 17.11) is provided for informational purposes only and is not codified in the Code of Federal Regulations.

The Service's listing regulations at 50 CFR 424.11(d), state that: The data to support the removal of a species from the list must be the best scientific and commercial data available to the Director to substantiate that the species is neither endangered nor threatened for one or more of the following reasons:

1. *Extinction*—Unless each individual of the listed species was previously identified and located, a sufficient period of time must be allowed before delisting to clearly ensure that the species is in fact extinct.

2. *Recovery of the species*—The principal goal of the Service is to return listed species to a point at which protection under the Act is no longer required. A species may be delisted if evidence shows that it is no longer endangered or threatened.

3. *Original data for classification in error*—Subsequent investigations may produce data that show that the best scientific or commercial data available at the time the species was listed were in error.

Species		Historic range	Former vertebrate population where endangered or threatened	Former status	Deleted	
Common name	Scientific name				Citation	Reason
Duck, Newber	<i>Anas "clay"</i>	U.S.A. (AZ, NM, TX) to central Mexico	U.S. only	E	43 FR 32258-61; January 25, 1978.	Original data in error.
Puffin, Tucope	<i>Cypripiter nevadensis callosus</i>	U.S.A. (CA)	Entire	E	47 FR 2317-19; January 15, 1982.	Extinct.
Cisco, longnose	<i>Coregonus longis</i>	U.S.A. and Canada (Lake Michigan, Huron, Erie)	do	E	48 FR 36841-42; September 2, 1983.	Extinct.
Pike, blue	<i>Stizostedion vitreum glaucum</i>	U.S.A. and Canada (Lakes Erie, Ontario)	do	E	48 FR 39841-43; September 2, 1983.	Extinct.
Sparrow, Santa Barbara song	<i>Melospiza melodia grammacus</i>	U.S.A. (CA)	do	E	48 FR 46336-37; October 12, 1983.	Extinct.
Traillrog, Pine Barrens	<i>Hyla andersoni</i>	U.S.A. (FL, AL, NC, SC, N.J.)	Florida	E	46 FR 52740-43; November 22, 1983.	Original data in error.
Peary mussel, Sampson's	<i>Epiblastes (=Dynamis) sampsoni</i>	U.S.A. (IL, IN)	NA	E	48 FR 1057-58; January 9, 1984.	Extinct.
Turtle, Indian flap-shelled	<i>Lissemys punctata punctata</i>	India, Pakistan, Bangladesh	Entire	E	49 FR 7194-98; February 29, 1984.	Original data in error.

E. ENVIRONMENTAL PROTECTION

National Environmental Policy Act of 1969*

* 42 U.S.C. §4321 (1976).

Public Law 91-190

AN ACT

January 1, 1970
[S. 1075]

To establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

National Environmental
Policy Act of
1969.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Environmental Policy Act of 1969".

PURPOSE

SEC. 2. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I

DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

Policies and
goals.

SEC. 101. (a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

- (1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- (2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;
- (3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
- (4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;
- (5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Sec. 102. The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall—

Administration.

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

- (i) the environmental impact of the proposed action,
- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) alternatives to the proposed action,
- (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

Copies of statements, etc.; availability.

81 Stat. 54.

(D) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(E) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(F) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(G) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(H) assist the Council on Environmental Quality established by title II of this Act.

Policy review.

SEC. 103. All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

SEC. 104. Nothing in Section 102 or 103 shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

SEC. 105. The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

TITLE II

COUNCIL ON ENVIRONMENTAL QUALITY

Report to Congress.

SEC. 201. The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban, and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

Council on Environmental Quality.

SEC. 202. There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds: to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

SEC. 203. The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

SEC. 204. It shall be the duty and function of the Council—

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 201;

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

SEC. 205. In exercising its powers, functions, and duties under this Act, the Council shall—

(1) consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order numbered 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and

(2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

80 Stat. 416.
Duties and
functions.

Report to
President.

16 USC 17k
note.

Tenure and
compensation.

Post, p. 864.

Appropriations.

SEC. 206. Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates (5 U.S.C. 5313). The other members of the Council shall be compensated at the rate provided for Level IV or the Executive Schedule Pay Rates (5 U.S.C. 5315).

SEC. 207. There are authorized to be appropriated to carry out the provisions of this Act not to exceed \$300,000 for fiscal year 1970, \$700,000 for fiscal year 1971, and \$1,000,000 for each fiscal year thereafter.

Approved January 1, 1970.

**Marine Protection, Research and Sanctuaries Act
of 1972***

* 33 U.S.C. §1401 (1976).

CHAPTER 37—OCEAN DUMPING

- Sec.
1401. Congressional finding, policy, and declaration of purpose.
 (a) Dangers of unregulated dumping.
 (b) Policy of regulation and prevention or limitation.
 (c) Regulation of dumping and transportation for dumping purposes.
1402. Definitions.
- SUBCHAPTER I—REGULATION
1411. Prohibited acts.
1412. Dumping permit program.
 (a) Environmental Protection Agency permits.
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- 1412a. Dumping of sewage sludge and industrial waste.
 (a) Creation; exceptions.
 (b) Permits for dumping of industrial waste; issuance, etc.
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1413. Dumping permit program for dredged material.
 (a) Issuance by Secretary of the Army.
 (b) Independent determination of need for dumping, other methods of disposal, and appropriate locations.
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1414. Permit conditions.
 (a) Designated and included conditions.
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 (c) General permits.
 (d) Review.
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 (f) Public information.
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 (h) Low-level radioactive waste; research purposes.
 (i) Radioactive Material Disposal Impact Assessment; Congressional approval.
1415. Penalties.
 (a) Assessment of civil penalty by Administrator; remission or mitigation; court action for appropriate relief.
 (b) Criminal penalties.
 (c) Separate offenses.
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 (e) Liability of vessels in rem.
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1416. Relationship to other laws.
 (a) Voiding of preexisting licenses.
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- Sec. (c) Impairment of navigation.
- (d) Consistent State programs.
- (e) Existing conservation programs not affected.
- (f) Dumping of dredged material in Long Island Sound from any Federal, etc., project.
- 1417. Enforcement.
 - (a) Utilization of other departments, agencies, and instrumentalities.
 - (b) Delegation of review and evaluation authority.
 - (c) Surveillance and other enforcement activity.
- 1418. Regulations.
- 1419. International cooperation.
- 1420. Authorization of appropriations.
- 1421. Annual report to Congress.

SUBCHAPTER II—RESEARCH

- 1441. Monitoring and research program; reports to Congress.
- 1442. Research program respecting possible long-range effects of pollution, overfishing, and man-induced changes of ocean ecosystems.
 - (a) Secretary of Commerce.
 - (b) Action with other nations.
 - (c) Annual report to Congress.
 - (d) Cooperation of other departments, agencies, and independent instrumentalities.
 - (e) Utilization of personnel, services, and facilities; inter-agency agreements.
- 1443. Cooperation with public authorities, agencies, and institutions, private agencies and institutions, and individuals.
- 1444. Authorization of appropriations.
- 1445. Removal of heavy metals and other toxic organic materials from sewage sludge of city of New York; study, etc.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1603 of this title; title 42 sections 6908, 10104.

§ 1401. Congressional finding, policy, and declaration of purpose

(a) Dangers of unregulated dumping

Unregulated dumping of material into ocean waters endangers human health, welfare, and amenities, and the marine environment, ecological systems, and economic potentialities.

(b) Policy of regulation and prevention or limitation

The Congress declares that it is the policy of the United States to regulate the dumping of all types of materials into ocean waters and to prevent or strictly limit the dumping into ocean waters of any material which would adversely affect human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities.

(c) Regulation of dumping and transportation for dumping purposes

It is the purpose of this chapter to regulate (1) the transportation by any person of material from the United States and, in the case of United States vessels, aircraft, or agencies, the transportation of material from a location outside the United States, when in either case the transportation is for the purpose of dumping the material into ocean waters, and (2) the dumping of material transported by any person from a location outside the United States, if the

dumping occurs in the territorial sea or the contiguous zone of the United States.

(Pub. L. 92-532, § 2, Oct. 23, 1972, 86 Stat. 1052; Pub. L. 93-254, § 1(1), Mar. 22, 1974, 88 Stat. 50.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 92-532, which enacted this chapter and sections 1431 to 1434 of Title 16, Conservation.

AMENDMENTS

1974—Subsec. (b), Pub. L. 93-254 deleted statement of the purpose of this chapter as being the regulation of transportation of material from the United States for dumping into ocean waters, and the dumping of material, transported from outside the United States, if the dumping occurs in ocean waters over which the United States has jurisdiction or over which it may exercise control, under accepted principles of international law, in order to protect its territory or territorial sea, now covered by subsec. (c) of this section. Subsec. (c), Pub. L. 93-254 added subsec. (c).

EFFECTIVE DATE OF 1974 AMENDMENT

Section 2 of Pub. L. 93-254 provided in part that amendment of subsec. (b) and (c) of this section and sections 1402, 1411, and 1413(a), other than last sentence of subsec. (a), of this title, by Pub. L. 93-254 shall become effective Mar. 22, 1974.

SHORT TITLE

Section 1 of Pub. L. 92-532 provided: "That this Act [enacting this chapter and sections 1431 to 1434 of Title 16, Conservation] may be cited as the 'Marine Protection, Research, and Sanctuaries Act of 1972.'"

ENVIRONMENTAL EFFECTS ABROAD OF MAJOR FEDERAL ACTIONS

For provisions relating to environmental effects abroad of major federal actions, see Ex. Ord. No. 12114, Jan. 4, 1979, 44 F.R. 1957, set out as a note under section 4321 of Title 42, The Public Health and Welfare.

FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

For provisions relating to the responsibility of the head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of Title 42, The Public Health and Welfare.

§ 1402. Definitions

For the purposes of this chapter the term—

(a) "Administrator" means the Administrator of the Environmental Protection Agency.

(b) "Ocean waters" means those waters of the open seas lying seaward of the base line from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606; TIAS 6436).

(c) "Material" means matter of any kind or description, including, but not limited to, dredged material, solid waste, incinerator residue, garbage, sewage, sewage sludge, munitions, radiological, chemical, and biological warfare agents, radioactive materials, chemicals, biological and laboratory waste, wreck or discarded equipment, rock, sand, excavation debris, and

industrial, municipal, agricultural, and other waste; but such term does not mean sewage from vessels within the meaning of section 1322 of this title. Oil within the meaning of section 1321 of this title shall be included only to the extent that such oil is taken on board a vessel or aircraft for the purpose of dumping.

(d) "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.

(e) "Person" means any private person or entity, or any officer, employee, agent, department, agency, or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

(f) "Dumping" means a disposition of material: *Provided*, That it does not mean a disposition of any effluent from any outfall structure to the extent that such disposition is regulated under the provisions of the Federal Water Pollution Control Act, as amended [33 U.S.C. 1351 et seq.], under the provisions of section 407 of this title, or under the provisions of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], nor does it mean a routine discharge of effluent incidental to the propulsion of, or operation of motor-driven equipment on, vessels: *Provided, further*, That it does not mean the construction of any fixed structure or artificial island nor the intentional placement of any device in ocean waters or on or in the submerged land beneath such waters, for a purpose other than disposal, when such construction or such placement is otherwise regulated by Federal or State law or occurs pursuant to an authorized Federal or State program: *And provided further*, That it does not include the deposit of oyster shells, or other materials when such deposit is made for the purpose of developing, maintaining, or harvesting fisheries resources and is otherwise regulated by Federal or State law or occurs pursuant to an authorized Federal or State program.

(g) "District court of the United States" includes the District Court of Guam, the District Court of the Virgin Islands, the District Court of Puerto Rico, the District Court of the Canal Zone, and in the case of American Samoa and the Trust Territory of the Pacific Islands, the District Court of the United States for the District of Hawaii, which court shall have jurisdiction over actions arising therein.

(h) "Secretary" means the Secretary of the Army.

(i) "Dredged material" means any material excavated or dredged from the navigable waters of the United States.

(j) "High-level radioactive waste" means the aqueous waste resulting from the operation of the first cycle solvent extraction system, or equivalent and the concentrated waste from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated reactor fuels, or irradiated fuel from nuclear power reactors.

(k) "Transport" or "transportation" refers to the carriage and related handling of any material by a vessel, or by any other vehicle, including aircraft.

(l) "Convention" means the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter.

(Pub. L. 92-532, § 3, Oct. 23, 1972, 86 Stat. 1052; Pub. L. 93-254, § 1(2), Mar. 22, 1974, 88 Stat. 50.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in subsec. (d), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

The Federal Water Pollution Control Act, as amended, referred to in subsec. (f), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, § 2, Oct. 13, 1972, 86 Stat. 815, which is classified generally to chapter 28 (§ 1351 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1351 of this title and Tables.

The Atomic Energy Act of 1954, as amended, referred to in subsec. (f), is act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, as amended, which is classified principally to chapter 23 (§ 2011 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 42 and Tables.

AMENDMENTS

1974—Subsec. (c), Pub. L. 93-254, § 1(2)(A), substituted "sewage from vessels within the meaning of section 1322 of this title. Oil within the meaning of section 1321 of this title shall be included only to the extent that such oil is taken on board a vessel or aircraft for the purpose of dumping." for "oil within the meaning of section 11 of the Federal Water Pollution Control Act and does not mean sewage from vessels within the meaning of section 13 of such Act."

Subsec. (l), Pub. L. 93-254, § 1(2)(C), added subsec. (l).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-254 effective Mar. 22, 1974, see section 3 of Pub. L. 93-254, set out in part as a note under section 1401 of this title.

SUBCHAPTER I—REGULATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1412a of this title; title 42 sections 6922, 6923, 6924.

§ 1411. Prohibited acts

(a) Except as may be authorized by a permit issued pursuant to section 1412 or section 1413 of this title, and subject to regulations issued pursuant to section 1418 of this title,

(1) no person shall transport from the United States, and

(2) in the case of a vessel or aircraft registered in the United States or flying the United States flag or in the case of a United States department, agency, or instrumentality, no person shall transport from any location

any material for the purpose of dumping it into ocean waters.

(b) Except as may be authorized by a permit issued pursuant to section 1412 of this title, and subject to regulations issued pursuant to section 1418 of this title, no person shall dump any material transported from a location outside the United States (1) into the territorial sea of the United States, or (2) into a zone contiguous

to the territorial sea of the United States, extending to a line twelve nautical miles seaward from the base line from which the breadth of the territorial sea is measured, to the extent that it may affect the territorial sea or the territory of the United States.

(Pub. L. 92-532, title I, § 101, Oct. 23, 1972, 86 Stat. 1053; Pub. L. 93-254, § 1(3), Mar. 22, 1974, 88 Stat. 51.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93-254 incorporated existing provisions in the introductory text, substituting reference to permits issued under section 1412 or section 1413 of this title for prior reference to such issuance under this subchapter; incorporated existing provisions in item designated (1); added item (2); and substituted prohibition against transportation of any material for ocean dumping for former prohibition against such dumping of any radiological, chemical, or biological warfare agent or any high-level radioactive waste, or any other material.

Subsec. (b). Pub. L. 93-254 substituted reference to permits issued under section 1412 of this title for former reference to such issuance under this subchapter, made any ocean dumping subject to regulations issued under section 1418 of this title, and substituted prohibition against dumping of any material for former prohibition against dumping of any radiological, chemical, or biological warfare agent or any high-level radioactive waste, or any other material.

Subsec. (c). Pub. L. 93-254 deleted subsec. (c) which prohibited any officer, employee, agent, department, agency, or instrumentality of the United States from transporting from any location outside the United States any radiological, chemical, or biological warfare agent or any high-level radioactive waste, or, except as may be authorized in a permit, any other material for purpose of dumping in ocean waters. See subsec. (b) of this section.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-254 effective Mar. 22, 1974, see section 2 of Pub. L. 93-254, set out in part as a note under section 1401 of this title.

EFFECTIVE DATE

Section 110(a) of title I of Pub. L. 92-532 provided that: "This title (this subchapter) shall take effect six months after the date of the enactment of this Act [Oct. 23, 1972]."

SAVES PROVISIONS

Section 110(b) of title I of Pub. L. 92-532 provided that: "No legal action begun, or right of action accrued, prior to the effective date of this title (this subchapter) shall be affected by any provision of this title (this subchapter)."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1412, 1412a, 1443 of this title.

§ 1412. Dumping permit program

(a) Environmental Protection Agency permits

Except in relation to dredged material, as provided for in section 1413 of this title, and in relation to radiological, chemical, and biological warfare agents and high-level radioactive waste, for which no permit may be issued, the Administrator may issue permits, after notice and opportunity for public hearings, for the transportation from the United States or, in the case of an agency or instrumentality of the United States, or in the case of a vessel or aircraft reg-

istered in the United States or flying the United States flag, for the transportation from a location outside the United States, of material for the purpose of dumping it into ocean waters, or for the dumping of material into the waters described in section 1411(b) of this title, where the Administrator determines that such dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. The Administrator shall establish and apply criteria for reviewing and evaluating such permit applications, and, in establishing or revising such criteria, shall consider, but not be limited in his consideration to, the following:

(A) The need for the proposed dumping.

(B) The effect of such dumping on human health and welfare, including economic, esthetic, and recreational values.

(C) The effect of such dumping on fisheries resources, plankton, fish, shellfish, wildlife, shore lines and beaches.

(D) The effect of such dumping on marine ecosystems, particularly with respect to—

(i) the transfer, concentration, and dispersion of such material and its byproducts through biological, physical, and chemical processes.

(ii) potential changes in marine ecosystem diversity, productivity, and stability, and

(iii) species and community population dynamics.

(E) The persistence and permanence of the effects of the dumping.

(F) The effect of dumping particular volumes and concentrations of such materials.

(G) Appropriate locations and methods of disposal or recycling, including land-based alternatives and the probable impact of requiring use of such alternate locations or methods upon considerations affecting the public interest.

(H) The effect on alternate uses of oceans, such as scientific study, fishing, and other living resource exploitation, and non-living resource exploitation.

(I) In designating recommended sites, the Administrator shall utilize wherever feasible locations beyond the edge of the Continental Shelf.

In establishing or revising such criteria, the Administrator shall consult with Federal, State, and local officials, and interested members of the general public, as may appear appropriate to the Administrator. With respect to such criteria as may affect the civil works program of the Department of the Army, the Administrator shall also consult with the Secretary. In reviewing applications for permits, the Administrator shall make such provision for consultation with interested Federal and State agencies as he deems useful or necessary. No permit shall be issued for a dumping of material which will violate applicable water quality standards. To the extent that he may do so without relaxing the requirements of this subchapter, the Administrator, in establishing or revising such criteria, shall apply the standards and criteria

binding upon the United States under the Convention, including its Annexes.

(b) Permit categories

The Administrator may establish and issue various categories of permits, including the general permits described in section 1414(c) of this title.

(c) Sites and times for dumping

The Administrator may, considering the criteria established pursuant to subsection (a) of this section, designate recommended sites or times for dumping and, when he finds it necessary to protect critical areas, shall, after consultation with the Secretary, also designate sites or times within which certain materials may not be dumped.

(d) Fish wastes

No permit is required under this subchapter for the transportation for dumping or the dumping of fish wastes, except when deposited in harbors or other protected or enclosed coastal waters, or where the Administrator finds that such deposits could endanger health, the environment, or ecological systems in a specific location. Where the Administrator makes such a finding, such material may be deposited only as authorized by a permit issued by the Administrator under this section.

(e) Foreign State permits; acceptance

In the case of transportation of material, by an agency or instrumentality of the United States or by a vessel or aircraft registered in the United States or flying the United States flag, from a location in a foreign State Party to the Convention, a permit issued pursuant to the authority of that foreign State Party, in accordance with Convention requirements, and which otherwise could have been issued pursuant to subsection (a) of this section, shall be accepted, for the purposes of this subchapter, as if it were issued by the Administrator under the authority of this section: *Provided*, That in the case of an agency or instrumentality of the United States, no application shall be made for a permit to be issued pursuant to the authority of a foreign State Party to the Convention unless the Administrator concurs in the filing of such application.

(Pub. L. 92-532, title I § 102, Oct. 23, 1972, 86 Stat. 1054; Pub. L. 93-254, § 1(4), Mar. 22, 1974, 88 Stat. 51; Pub. L. 96-572, § 3, Dec. 22, 1980, 94 Stat. 3345.)

AMENDMENTS

1980—Subsec. (c). Pub. L. 96-572 added applicability to United States agency or instrumentality, and proviso respecting such agency or instrumentality.

1974—Subsec. (a). Pub. L. 93-254, § 1(4)(A), substituted "for which no permit may be issued," for "as provided for in section 1411 of this title," inserted "or in the case of a vessel or aircraft registered in the United States or flying the United States flag," after "instrumentality of the United States," and required the Administrator to apply the standards and criteria binding upon the United States under the Convention, including its Annexes.

Subsec. (e). Pub. L. 93-254, § 1(4)(B), added subsec. (e).

EFFECTIVE DATE OF 1974 AMENDMENT

Section 2 of Pub. L. 93-254 provided in part that: "The amendments made by subparagraph 1(4)(A)(iii) and paragraph 1(4)(B) of this Act (enacting provision of subsec. (a) respecting application of standards by Administrator and subsec. (e) of this section) shall become effective on the date that the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters enters into force for the United States." [The Convention entered into force for the United States Aug. 30, 1975.]

Amendment of subsec. (a) of this section, other than last sentence, by Pub. L. 93-254 effective Mar. 22, 1974, see section 2 of Pub. L. 93-254, set out in part as a note under section 1401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1411, 1413, 1414, 1416, 1418 of this title; title 42 section 9601.

§ 1412a. Dumping of sewage sludge and industrial waste

(a) *Cessation; exceptions*

The Administrator of the Environmental Protection Agency (hereinafter referred to in this section as the "Administrator") shall end the dumping of sewage sludge and industrial waste into ocean waters, or into waters described in section 101(b) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1411(b)), as soon as possible after November 4, 1977, but, except as provided in subsections (b) and (c), in no case may the Administrator issue any permit, or any renewal thereof (under title I of such Act of 1972 (33 U.S.C. 1411 et seq.)) which authorizes any such dumping after December 31, 1981.

(b) *Permits for dumping of industrial waste; issuance, etc.*

After December 31, 1981, the Administrator may issue permits under such title I (33 U.S.C. 1411 et seq.) for the dumping of industrial waste into ocean waters, or into waters described in such section 101(b) (33 U.S.C. 1411(b)), if the Administrator determines—

(1) that the proposed dumping is necessary to conduct research—

(A) on new technology related to ocean dumping, or

(B) to determine whether the dumping of such substance will unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities;

(2) that the scale of the proposed dumping is such that the dumping will have minimal adverse impact upon the human health, welfare, and amenities, and the marine environment, ecological systems, and economic potentialities; and

(3) after consultation with the Secretary of Commerce, that the potential benefits of such research will outweigh any such adverse impact.

Each permit issued pursuant to this subsection shall be subject to such conditions and restrictions as the Administrator determines to be necessary to minimize possible adverse impacts of such dumping. No permit issued by the Ad-

ministrator pursuant to this subsection may have an effective period of more than six consecutive months.

(c) **Emergency permits for dumping of industrial waste; issuance, etc.**

After December 31, 1981, the Administrator may issue emergency permits under such title I [33 U.S.C. 1411 et seq.] for the dumping of industrial waste into ocean waters, or into waters described in such section 101(b) [33 U.S.C. 1411(b)], if the Administrator determines that there has been demonstrated to exist an emergency, requiring the dumping of such waste, which poses an unacceptable risk relating to human health and admits of no other feasible solution. As used herein, "emergency" refers to situations requiring action with a marked degree of urgency.

(d) **Definitions**

For purposes of this section—

(1) the term "sewage sludge" means any solid, semisolid, or liquid waste generated by a municipal wastewater treatment plant the ocean dumping of which may unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, and economic potentialities; and

(2) the term "industrial waste" means any solid, semisolid, or liquid waste generated by a manufacturing or processing plant the ocean dumping of which may unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, and economic potentialities.

(Pub. L. 95-153, § 4, Nov. 4, 1977, 91 Stat. 1285; Pub. L. 96-572, § 2, Dec. 22, 1980, 94 Stat. 3344.)

REVISIONS IN TEXT

The Marine Protection, Research, and Sanctuaries Act of 1972, referred to in subsec. (a), is Pub. L. 92-582, Oct. 23, 1972, 86 Stat. 1062, as amended. Title I of such Act of 1972 is classified generally to subchapter I (§ 1411 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of this title and Tables.

Such title I, referred to in subsec. (b) and (c), means title I of the Marine Protection, Research, and Sanctuaries Act of 1972.

CODIFICATION

Section was not enacted as part of the Marine Protection, Research, and Sanctuaries Act of 1972 which comprise this chapter.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-572, § 2(1), added applicability to industrial waste, exceptions respecting subsec. (b) and (c) of this section, and conforming changes in phraseology.

Subsec. (b). Pub. L. 96-572, § 2(3), added subsec. (b). Former subsec. (b), defining the term "sewage sludge", was struck out.

Subsec. (c), (d). Pub. L. 96-572, § 2(2), added subsec. (c) and (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1443 of this title.

§ 1413. Dumping permit program for dredged material

(a) **Issuance by Secretary of the Army**

Subject to the provisions of subsections (b), (c), and (d) of this section, the Secretary may issue permits, after notice and opportunity for public hearings, for the transportation of dredged material for the purpose of dumping it into ocean waters, where the Secretary determines that the dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities.

(b) **Independent determination of need for dumping, other methods of disposal, and appropriate locations**

In making the determination required by subsection (a) of this section, the Secretary shall apply those criteria, established pursuant to section 1412(a) of this title, relating to the effects of the dumping. Based upon an evaluation of the potential effect of a permit denial on navigation, economic and industrial development, and foreign and domestic commerce of the United States, the Secretary shall make an independent determination as to the need for the dumping. The Secretary shall also make an independent determination as to other possible methods of disposal and as to appropriate locations for the dumping. In considering appropriate locations, he shall, to the extent feasible, utilize the recommended sites designated by the Administrator pursuant to section 1412(c) of this title.

(c) **Disagreement of Administrator with determination of Secretary of the Army**

Prior to issuing any permit under this section, the Secretary shall first notify the Administrator of his intention to do so. In any case in which the Administrator disagrees with the determination of the Secretary as to compliance with the criteria established pursuant to section 1412(a) of this title relating to the effects of the dumping or with the restrictions established pursuant to section 1412(c) of this title relating to critical areas, the determination of the Administrator shall prevail. Unless the Administrator grants a waiver pursuant to subsection (d) of this section, the Secretary shall not issue a permit which does not comply with such criteria and with such restrictions.

(d) **Waiver of requirements**

If, in any case, the Secretary finds that, in the disposition of dredged material, there is no economically feasible method or site available other than a dumping site the utilization of which would result in non-compliance with the criteria established pursuant to section 1412(a) of this title relating to the effects of dumping or with the restrictions established pursuant to section 1412(c) of this title relating to critical areas, he shall so certify and request a waiver from the Administrator of the specific requirements involved. Within thirty days of the receipt of the waiver request, unless the Administrator finds that the dumping of the material will result in an unacceptably adverse impact

on municipal water supplies, shell-fish beds, wildlife, fisheries (including spawning and breeding areas), or recreational areas, he shall grant the waiver.

(e) **Federal projects involving dredged material**

In connection with Federal projects involving dredged material, the Secretary may, in lieu of the permit procedure, issue regulations which will require the application to such projects of the same criteria, other factors to be evaluated, the same procedures, and the same requirements which apply to the issuance of permits under subsections (a), (b), (c), and (d) of this section.

(Pub. L. 92-532, title I, § 103, Oct. 23, 1972, 86 Stat. 1055.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1411, 1412, 1414, 1415 of this title; title 42 section 9601.

§ 1414. Permit conditions

(a) **Designated and included conditions**

Permits issued under this subchapter shall designate and include (1) the type of material authorized to be transported for dumping or to be dumped; (2) the amount of material authorized to be transported for dumping or to be dumped; (3) the location where such transport for dumping will be terminated or where such dumping will occur; (4) the length of time for which the permits are valid and their expiration date; (5) any special provisions deemed necessary by the Administrator or the Secretary, as the case may be, after consultation with the Secretary of the Department in which the Coast Guard is operating, for the monitoring and surveillance of the transportation or dumping; and (6) such other matters as the Administrator or the Secretary, as the case may be, deems appropriate.

(b) **Permit processing fees; reporting requirements**

The Administrator or the Secretary, as the case may be, may prescribe such processing fees for permits and such reporting requirements for actions taken pursuant to permits issued by him under this subchapter as he deems appropriate.

(c) **General permits**

Consistent with the requirements of sections 1412 and 1413 of this title, but in lieu of a requirement for specific permits in such case, the Administrator or the Secretary, as the case may be, may issue general permits for the transportation for dumping, or dumping, or both, of specified materials or classes of materials for which he may issue permits, which he determines will have a minimal adverse environmental impact.

(d) **Review**

Any permit issued under this subchapter shall be reviewed periodically and, if appropriate, revised. The Administrator or the Secretary, as the case may be, may limit or deny the issuance of permits, or he may alter or revoke partially or entirely the terms of permits issued by him under this subchapter, for the transpor-

tion for dumping, or for the dumping, or both, of specified materials or classes of materials, where he finds that such materials cannot be dumped consistently with the criteria and other factors required to be applied in evaluating the permit application. No action shall be taken under this subsection unless the affected person or permittee shall have been given notice and opportunity for a hearing on such action as proposed.

(e) **Information for review and evaluation of applications**

The Administrator or the Secretary, as the case may be, shall require an applicant for a permit under this subchapter to provide such information as he may consider necessary to review and evaluate such application.

(f) **Public information**

Information received by the Administrator or the Secretary, as the case may be, as a part of any application or in connection with any permit granted under this subchapter shall be available to the public as a matter of public record, at every stage of the proceeding. The final determination of the Administrator or the Secretary, as the case may be, shall be likewise available.

(g) **Display of issued permits**

A copy of any permit issued under this subchapter shall be placed in a conspicuous place in the vessel which will be used for the transportation or dumping authorized by such permit, and an additional copy shall be furnished by the issuing official to the Secretary of the department in which the Coast Guard is operating, or its designee.

(h) **Low-level radioactive waste; research purposes**

Notwithstanding any provision of this subchapter to the contrary, during the two-year period beginning on January 6, 1983, no permit may be issued under this subchapter that authorizes the dumping of any low-level radioactive waste unless the Administrator of the Environmental Protection Agency determines—

(1) that the proposed dumping is necessary to conduct research—

(A) on new technology related to ocean dumping, or

(B) to determine the degree to which the dumping of such substance will degrade the marine environment;

(2) that the scale of the proposed dumping is limited to the smallest amount of such material and the shortest duration of time that is necessary to fulfill the purposes of the research, such that the dumping will have minimal adverse impact upon human health, welfare, and amenities, and the marine environment, ecological systems, economic potentialities, and other legitimate uses;

(3) after consultation with the Secretary of Commerce, that the potential benefits of such research will outweigh any such adverse impact; and

(4) that the proposed dumping will be preceded by appropriate baseline monitoring

studies of the proposed dump site and its surrounding environment.

Each permit issued pursuant to this subsection shall be subject to such conditions and restrictions as the Administrator determines to be necessary to minimize possible adverse impacts of such dumping.

(l) **Radioactive Material Disposal Impact Assessment; Congressional approval**

(1) Two years after January 6, 1983, the Administrator may not issue a permit under this subchapter for the disposal of radioactive waste material until the applicant, in addition to complying with all other requirements of this subchapter, prepares, with respect to the site at which the disposal is proposed, a Radioactive Material Disposal Impact Assessment which shall include—

(A) a listing of all radioactive materials in each container to be disposed, the number of containers to be dumped, the structural diagrams of each container, the number of curies of each material in each container, and the exposure levels in rems at the inside and outside of each container;

(B) an analysis of the environmental impact of the proposed action, at the site at which the applicant desires to dispose of the material, upon human health and welfare and marine life;

(C) any adverse environmental effects at the site which cannot be avoided should the proposal be implemented;

(D) an analysis of the resulting environmental and economic conditions if the containers fail to contain the radioactive waste material when initially deposited at the specific site;

(E) a plan for the removal or containment of the disposed nuclear material if the container leaks or decomposes;

(F) a determination by each affected State whether the proposed action is consistent with its approved Coastal Zone Management Program;

(G) an analysis of the economic impact upon other users of marine resources;

(H) alternatives to the proposed action;

(I) comments and results of consultation with State officials and public hearings held in the coastal States that are nearest to the affected areas;

(J) a comprehensive monitoring plan to be carried out by the applicant to determine the full effect of the disposal on the marine environment, living resources, or human health, which plan shall include, but not be limited to, the monitoring of exterior container radiation samples, the taking of water and sediment samples, and fish and benthic animal samples, adjacent to the containers, and the acquisition of such other information as the Administrator may require; and

(K) such other information which the Administrator may require in order to determine the full effects of such disposal.

(2) The Administrator shall include, in any permit to which paragraph (1) applies, such terms and conditions as may be necessary to ensure that the monitoring plan required under

paragraph (1)(J) is fully implemented, including the analysis by the Administrator of the samples required to be taken under the plan.

(3) The Administrator shall submit a copy of the assessment prepared under paragraph (1) with respect to any permit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(4)(A) Upon a determination by the Administrator that a permit to which this subsection applies should be issued, the Administrator shall transmit such a recommendation to the House of Representatives and the Senate.

(B) No permit may be issued by the Administrator under this chapter for the disposal of radioactive materials in the ocean unless the Congress, by approval of a resolution described in paragraph (D) within 90 days of continuous session of the Congress beginning on the date after the date of receipt by the Senate and the House of Representatives of such recommendation, authorizes the Administrator to grant a permit to dispose of radioactive material under this chapter.

(C) For purposes of this subsection—

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

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the 90 day calendar period.

(D) For the purposes of this subsection, the term "resolution" means a joint resolution, the resolving clause of which is as follows: "That the House of Representatives and the Senate approve and authorize the Administrator of the Environmental Protection Agency to grant a permit¹ under the Marine Protection, Research, and Sanctuaries Act of 1972 to dispose of radioactive materials in the ocean as recommended by the Administrator to the Congress on _____, 19—"; the first blank space therein to be filled with the appropriate applicant to dispose of nuclear material and the second blank therein to be filled with the date on which the Administrator submits the recommendation to the House of Representatives and the Senate.

(Pub. L. 92-532, title I, § 104, Oct. 23, 1972, 86 Stat. 1056; Pub. L. 97-424, title IV, § 424(a), Jan. 5, 1983, 96 Stat. 2166.)

REFERENCES IN TEXT

The Marine Protection, Research and Sanctuaries Act of 1972, referred to in subsec. (D)(4)(D), is Pub. L. 92-532, Oct. 23, 1972, 86 Stat. 1056, as amended, which is classified principally to this chapter (§ 1401 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1401 of this title and Tables.

AMENDMENTS

1983—Subsecs. (h), (i), Pub. L. 97-424 added subsecs. (h) and (i).

¹So in original. Probably should be followed by "to" and a blank space.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1412 of this title.

§ 1415. Penalties

(a) Assessment of civil penalty by Administrator; remission or mitigation; court action for appropriate relief

Any person who violates any provision of this subchapter, or of the regulations promulgated under this subchapter, or a permit issued under this subchapter shall be liable to a civil penalty of not more than \$50,000 for each violation to be assessed by the Administrator. No penalty shall be assessed until the person charged shall have been given notice and an opportunity for a hearing of such violation. In determining the amount of the penalty, the gravity of the violation, prior violations, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation shall be considered by said Administrator. For good cause shown, the Administrator may remit or mitigate such penalty. Upon failure of the offending party to pay the penalty, the Administrator may request the Attorney General to commence an action in the appropriate district court of the United States for such relief as may be appropriate.

(b) Criminal penalties

In addition to any action which may be brought under subsection (a) of this section, a person who knowingly violates this subchapter, regulations promulgated under this subchapter, or a permit issued under this subchapter shall be fined not more than \$50,000, or imprisoned for not more than one year, or both.

(c) Separate offenses

For the purpose of imposing civil penalties and criminal fines under this section, each day of a continuing violation shall constitute a separate offense as shall the dumping from each of several vessels, or other sources.

(d) Injunctive relief

The Attorney General or his delegate may bring actions for equitable relief to enjoin an imminent or continuing violation of this subchapter, of regulations promulgated under this subchapter, or of permits issued under this subchapter, and the district courts of the United States shall have jurisdiction to grant such relief as the equities of the case may require.

(e) Liability of vessels in rem

A vessel, except a public vessel within the meaning of section 13 of the Federal Water Pollution Control Act, as amended, used in a violation, shall be liable in rem for any civil penalty assessed or criminal fine imposed and may be proceeded against in any district court of the United States having jurisdiction thereof; but no vessel shall be liable unless it shall appear that one or more of the owners, or bareboat charterers, was at the time of the violation a consenting party or privy to such violation.

(f) Revocation and suspension of permits

If the provisions of any permit issued under section 1412 or 1413 of this title are violated,

the Administrator or the Secretary, as the case may be, may revoke the permit or may suspend the permit for a specified period of time. No permit shall be revoked or suspended unless the permittee shall have been given notice and opportunity for a hearing on such violation and proposed suspension or revocation.

(g) Civil suits by private persons

(1) Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any prohibition, limitation, criterion, or permit established or issued by or under this subchapter. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such prohibition, limitation, criterion, or permit, as the case may be.

(2) No action may be commenced—

(A) prior to sixty days after notice of the violation has been given to the Administrator or to the Secretary, and to any alleged violator of the prohibition, limitation, criterion, or permit; or

(B) if the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with the prohibition, limitation, criterion, or permit; or

(C) if the Administrator has commenced action to impose a penalty pursuant to subsection (a) of this section, or if the Administrator, or the Secretary, has initiated permit revocation or suspension proceedings under subsection (f) of this section; or

(D) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of this subchapter.

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

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

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

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

(h) Emergencies

No person shall be subject to a civil penalty or to a criminal fine or imprisonment for dumping materials from a vessel if such materials are

dumped in an emergency to safeguard life at sea. Any such emergency dumping shall be reported to the Administrator under such conditions as he may prescribe.

(Pub. L. 92-532, title I, § 105, Oct. 23, 1972, 86 Stat. 1957.)

REFERENCES IN TEXT

Section 13 of the Federal Water Pollution Control Act, referred to in subsec. (e), is section 13 of act June 30, 1948, ch. 788, as added by act Apr. 3, 1970, Pub. L. 91-224, title I, § 102, 84 Stat. 100, which was classified to section 1143 of this title and was superseded by Pub. L. 92-500, Oct. 18, 1972, 86 Stat. 818. See section 1322 of this title.

§ 1416. Relationship to other laws

(a) Voiding of preexisting licenses

After the effective date of this subchapter, all licenses, permits, and authorizations other than those issued pursuant to this subchapter shall be void and of no legal effect, to the extent that they purport to authorize any activity regulated by this subchapter, and whether issued before or after the effective date of this subchapter.

(b) Actions under authority of Rivers and Harbors Act

The provisions of subsection (a) of this section shall not apply to actions taken before the effective date of this subchapter under the authority of the Rivers and Harbors Act of 1899 (30 Stat. 1151), as amended (33 U.S.C. 401 et seq.).

(c) Impairment of navigation

Prior to issuing any permit under this subchapter, if it appears to the Administrator that the disposition of material, other than dredged material, may adversely affect navigation in the territorial sea of the United States, or in the approaches to any harbor of the United States, or may create an artificial island on the Outer Continental Shelf, the Administrator shall consult with the Secretary and no permit shall be issued if the Secretary determines that navigation will be unreasonably impaired.

(d) Consistent State programs

After the effective date of this subchapter, no State shall adopt or enforce any rule or regulation relating to any activity regulated by this subchapter. Any State may, however, propose to the Administrator criteria relating to the dumping of materials into ocean waters within its jurisdiction, or into other ocean waters to the extent that such dumping may affect waters within the jurisdiction of such State, and if the Administrator determines, after notice and opportunity for hearing, that the proposed criteria are not inconsistent with the purposes of this subchapter, may adopt those criteria and may issue regulations to implement such criteria. Such determination shall be made by the Administrator within one hundred and twenty days of receipt of the proposed criteria. For the purposes of this subsection, the term "State" means any State, interstate or regional authority, Federal territory or Commonwealth or the District of Columbia.

(e) Existing conservation programs not affected

Nothing in this subchapter shall be deemed to affect in any manner or to any extent any provision of the Fish and Wildlife Coordination Act as amended (16 U.S.C. 661-666e).

(f) Dumping of dredged material in Long Island Sound from any Federal, etc., project

In addition to other provisions of law and notwithstanding the specific exclusion relating to dredged material in the first sentence in section 1412(a) of this title, the dumping of dredged material in Long Island Sound from any Federal project (or pursuant to Federal authorization) or from a dredging project by a non-Federal applicant exceeding 25,000 cubic yards shall comply with the criteria established pursuant to the second sentence of section 1412(a) of this title relating to the effects of dumping. Subsection (d) of this section shall not apply to this subsection.

(Pub. L. 92-532, title I, § 106, Oct. 23, 1972, 86 Stat. 1958; Pub. L. 96-572, § 4, Dec. 22, 1980, 94 Stat. 3345.)

REFERENCES IN TEXT

The effective date of this subchapter, referred to in subsec. (a), (b), and (d), means the effective date of title I of Pub. L. 92-532, which is six months after Oct. 23, 1972. See section 110(a) of Pub. L. 92-532, set out as an Effective Date note under section 1411 of this title.

The Rivers and Harbors Act of 1899, referred to in subsec. (b), is act Mar. 3, 1899, ch. 425, 30 Stat. 1151, as amended, which enacted sections 401, 403, 404, 406 to 409, 411 to 416, 418, 692, 549, 686, and 687 of this title. For complete classification of this Act to the Code, see Tables.

The Fish and Wildlife Coordination Act referred to in subsec. (e), is act Mar. 10, 1934, ch. 55, 48 Stat. 401, as amended, which is classified generally to sections 661 to 666e of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 661 of Title 16 and Tables.

AMENDMENTS

1980—Subsec. (f), Pub. L. 96-572 added subsec. (f).

§ 1417. Enforcement

(a) Utilization of other departments, agencies, and instrumentalities

The Administrator or the Secretary, as the case may be, may, whenever appropriate, utilize by agreement, the personnel, services and facilities of other Federal departments, agencies, and instrumentalities, or State agencies or instrumentalities, whether on a reimbursable or a nonreimbursable basis, in carrying out his responsibilities under this subchapter.

(b) Delegation of review and evaluation authority

The Administrator or the Secretary may delegate responsibility and authority for reviewing and evaluating permit applications, including the decision as to whether a permit will be issued, to an officer of his agency, or he may delegate, by agreement, such responsibility and authority to the heads of other Federal departments or agencies, whether on a reimbursable or nonreimbursable basis.

(c) Surveillance and other enforcement activity

The Secretary of the department in which the Coast Guard is operating shall conduct surveillance and other appropriate enforcement activity to prevent unlawful transportation of material for dumping, or unlawful dumping. Such enforcement activity shall include, but not be limited to, enforcement of regulations issued by him pursuant to section 1419 of this title, relating to safe transportation, handling, carriage, storage, and stowage. The Secretary of the Department in which the Coast Guard is operating shall supply to the Administrator and to the Attorney General, as appropriate, such information of enforcement activities and such evidentiary material assembled as they may require in carrying out their duties relative to penalty assessments, criminal prosecutions, or other actions involving litigation pursuant to the provisions of this subchapter.

(Pub. L. 92-532, title I, § 107, Oct. 23, 1972, 86 Stat. 1059.)

§ 1418. Regulations

In carrying out the responsibilities and authority conferred by this subchapter, the Administrator, the Secretary, and the Secretary of the department in which the Coast Guard is operating are authorized to issue such regulations as they may deem appropriate.

(Pub. L. 92-532, title I, § 108, Oct. 23, 1972, 86 Stat. 1059.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1411, 1417 of this title.

§ 1419. International cooperation

The Secretary of State, in consultation with the Administrator, shall seek effective international action and cooperation to insure protection of the marine environment, and may, for this purpose, formulate, present, or support specific proposals in the United Nations and other component international organizations for the development of appropriate international rules and regulations in support of the policy of this chapter.

(Pub. L. 92-532, title I, § 109, Oct. 23, 1972, 86 Stat. 1060.)

§ 1420. Authorization of appropriations

There are hereby authorized to be appropriated not to exceed \$3,800,000 for fiscal year 1973, not to exceed \$5,500,000 for each of the fiscal years 1974 and 1975, not to exceed \$5,300,000 for fiscal year 1976, not to exceed \$1,325,000 for the transition period (July 1 through September 30, 1976), not to exceed \$4,800,000 for fiscal year 1977, not to exceed \$4,800,000 for fiscal year 1978, not to exceed \$2,000,000 for each of fiscal year 1980, fiscal year 1981, and not to exceed \$4,213,000 for fiscal year 1982, for the purposes and administration of this subchapter, and for succeeding fiscal years only such sums as the Congress may authorize by law.

(Pub. L. 92-532, title I, § 111, Oct. 23, 1972, 86 Stat. 1060; Pub. L. 93-472, Oct. 26, 1974, 88 Stat.

1430; Pub. L. 94-62, § 1, July 25, 1975, 89 Stat. 303; Pub. L. 94-326, § 1, June 30, 1976, 90 Stat. 725; Pub. L. 95-153, § 1, Nov. 4, 1977, 91 Stat. 1255; Pub. L. 95-572, § 1, Dec. 22, 1980, 94 Stat. 3244; Pub. L. 97-16, June 23, 1981, 95 Stat. 100.)

AMENDMENTS

1981—Pub. L. 97-16 increased to \$4,213,000 from \$2,000,000 the authorization of appropriation for fiscal year 1982.

1980—Pub. L. 96-572 added provisions authorizing appropriations for fiscal years 1980, 1981, and 1982.

1977—Pub. L. 95-153 added provision authorizing appropriations not to exceed \$4,800,000 for fiscal year 1978.

1976—Pub. L. 94-326 added provision authorizing to be appropriated not to exceed \$4,800,000 for fiscal year 1977.

1975—Pub. L. 94-62 substituted "not to exceed \$5,300,000 for each of the fiscal years 1974 and 1975" for "and not to exceed \$5,500,000 for fiscal years 1974 and 1975", and added provisions authorizing appropriation of an amount not to exceed \$5,300,000 for fiscal year 1976, and not to exceed \$1,325,000 for the transition period (July 1 through Sept. 30, 1976).

1974—Pub. L. 93-472 substituted "fiscal years 1974 and 1976," for "fiscal year 1974."

§ 1421. Annual report to Congress

The Administrator shall on or before February 1 of each year report to the Congress on the administration of this subchapter during the preceding fiscal year, including recommendations for additional legislation if deemed necessary.

(Pub. L. 92-532, title I, § 112, Oct. 23, 1972, 86 Stat. 1060; Pub. L. 94-326, § 2, June 30, 1976, 90 Stat. 725; Pub. L. 96-470, title II, § 209(f), Oct. 19, 1980, 94 Stat. 2245.)

AMENDMENTS

1980—Pub. L. 96-470 substituted provision requiring the Administrator to report to Congress, on or before Feb. 1 of each year, on the administration of this subchapter during the preceding fiscal year for provision requiring the Administrator, the Secretary, and the Secretary of the department in which the Coast Guard is operating to each individually report to Congress, on or before Mar. 1 of each year, with the first report due on or before June 30, 1973, on the administration of this subchapter.

1976—Pub. L. 94-326 substituted provision that the Administrator, the Secretary, and the Secretary of the department in which the Coast Guard is operating shall each individually report, for provision that the Administrator shall report and substituted "March 1 of each year" for "June 30 of each year".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1416 of this title.

SUBCHAPTER II—RESEARCH**SUBCHAPTER REFERRED TO IN OTHER SECTIONS**

This subchapter is referred to in section 1704 of this title.

§ 1441. Monitoring and research program; reports to Congress

The Secretary of Commerce, in coordination with the Secretary of the Department in which the Coast Guard is operating and with the Administrator shall, within six months of October

23, 1972, initiate a comprehensive and continuing program of monitoring and research regarding the effects of the dumping of material into ocean waters or other coastal waters where the tide ebbs and flows or into the Great Lakes or their connecting waters and shall report from time to time, not less frequently than annually, his findings (including an evaluation of the short-term ecological effects and the social and economic factors involved) to the Congress.

(Pub. L. 92-532, title II, § 201, Oct. 23, 1972, 86 Stat. 1060.)

§ 1442. Research program respecting possible long-range effects of pollution, overfishing, and man-induced changes of ocean ecosystems

(a) Secretary of Commerce

The Secretary of Commerce, in consultation with other appropriate Federal departments, agencies, and instrumentalities shall, within six months of October 23, 1972, initiate a comprehensive and continuing program of research with respect to the possible long-range effects of pollution, overfishing, and man-induced changes of ocean ecosystems. These responsibilities shall include the scientific assessment of damages to the natural resources from spills of petroleum or petroleum products. In carrying out such research, the Secretary of Commerce shall take into account such factors as existing and proposed international policies affecting oceanic problems, economic considerations involved in both the protection and the use of the oceans, possible alternatives to existing programs, and ways in which the health of the oceans may best be preserved for the benefit of succeeding generations of mankind.

(b) Action with other nations

In carrying out his responsibilities under this section, the Secretary of Commerce, under the foreign policy guidance of the President and pursuant to international agreements and treaties made by the President with the advice and consent of the Senate, may act alone or in conjunction with any other nation or group of nations, and shall make known the results of his activities by such channels of communication as may appear appropriate.

(c) Annual report to Congress

In March of each year, the Secretary of Commerce shall report to the Congress on the results of activities undertaken by him pursuant to this section during the previous fiscal year. The Secretary shall include in this report the report to Congress of activities of the Department of Commerce under section 665 of title 16, required by that section.

(d) Cooperation of other departments, agencies, and independent instrumentalities

Each department, agency, and independent instrumentality of the Federal Government is authorized and directed to cooperate with the Secretary of Commerce in carrying out the purposes of this section and, to the extent permitted by law, to furnish such information as may be requested.

(e) Utilization of personnel, services, and facilities; inter-agency agreements

The Secretary of Commerce, in carrying out his responsibilities under this section, shall, to the extent feasible utilize the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities (including those of the Coast Guard for monitoring purposes), and is authorized to enter into appropriate inter-agency agreements to accomplish this action.

(Pub. L. 92-532, title II, § 202, Oct. 23, 1972, 86 Stat. 1060; Pub. L. 94-62, § 2, July 25, 1975, 89 Stat. 303; Pub. L. 96-381, § 3, Oct. 6, 1980, 94 Stat. 1524; Pub. L. 96-470, title II, § 201(f), Oct. 19, 1980, 94 Stat. 2242.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-381 inserted provision including within the responsibilities of the Secretary the scientific assessment of damages to natural resources from spills of petroleum or petroleum products.

Subsec. (c). Pub. L. 96-470 added provision requiring the Secretary to include in his annual report the report on activities of the Department of Commerce under section 665 of title 16.

1975—Subsec. (c). Pub. L. 94-62 substituted "March" for "January".

§ 1443. Cooperation with public authorities, agencies, and institutions, private agencies and institutions, and individuals

(a) The Administrator of the Environmental Protection Agency shall—

(1) conduct research, investigations, experiments, training, demonstrations, surveys, and studies for the purpose of—

(A) determining means of minimizing or ending, as soon as possible after October 6, 1980, the dumping into ocean waters, or waters described in section 1411(b) of this title, of material which may unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities, and

(B) developing disposal methods as alternatives to the dumping described in subparagraph (A); and

(2) encourage, cooperate with, promote the coordination of, and render financial and other assistance to appropriate public authorities, agencies, and institutions (whether Federal, State, interstate, or local) and appropriate private agencies, institutions, and individuals in the conduct of research and other activities described in paragraph (1).

(b) Nothing in this section shall be construed to affect in any way the December 31, 1981, termination date, established in section 1412a of this title, for the ocean dumping of sewage sludge.

(Pub. L. 92-532, title II, § 203, Oct. 23, 1972, 86 Stat. 1061; Pub. L. 96-381, § 1, Oct. 6, 1980, 94 Stat. 1523.)

CODIFICATION

In subsec. (a)(1)(A), October 6, 1980, was substituted for "the date of the enactment of this section", which has been translated to reflect the probable intent of Congress as meaning the date of enactment of Pub. L. 96-381 which amended this section generally and which was approved Oct. 6, 1980.

AMENDMENTS

1980—Pub. L. 96-381 substituted provision authorizing the Administrator of the Environmental Protection Agency to conduct research, etc., and to encourage and cooperate with public authorities, etc., for the purpose of determining means of minimizing or ending, as soon as possible after Oct. 6, 1980, dumping in ocean waters, or waters described in section 1411(b) of this title, of materials which may unreasonably degrade or endanger human health or the marine environment and to develop disposal methods as alternatives to dumping for provision authorizing the Secretary of Commerce to conduct research, etc., and to encourage and cooperate with public authorities, etc., for the purpose of minimizing or ending all dumping of materials within five years after the effective date of Pub. L. 92-532, which was approved Oct. 23, 1972, and inserted provision directing that nothing in this section be construed to affect in any way the Dec. 31, 1981, termination date, established by section 1412a of this title for ocean dumping of sewage sludge.

§ 1444. Authorization of appropriations

There are authorized to be appropriated for the first fiscal year after October 23, 1972, and for the next two fiscal years thereafter such sums as may be necessary to carry out this subchapter, but the sums appropriated for any such fiscal year may not exceed \$8,000,000. There are authorized to be appropriated not to exceed \$1,500,000 for the transition period (July 1 through September 30, 1976), not to exceed \$5,600,000 for fiscal year 1977, and not to exceed \$6,500,000 for fiscal year 1978, not to exceed \$11,399,000 for fiscal year 1981, and not to exceed \$12,000,000 for fiscal year 1982.

(Pub. L. 92-532, title II, § 204, Oct. 23, 1972, 86 Stat. 1061; Pub. L. 94-42, § 3, July 25, 1975, 89 Stat. 303; Pub. L. 94-336, § 2, June 30, 1976, 90 Stat. 725; Pub. L. 95-153, § 2, Nov. 4, 1977, 91 Stat. 1255; Pub. L. 96-381, § 2, Oct. 6, 1980, 94 Stat. 1523.)

AMENDMENTS

1980—Pub. L. 96-381 added provision authorizing appropriations of not to exceed \$11,399,000 for fiscal year 1981, and not to exceed \$12,000,000 for fiscal year 1982.

1977—Pub. L. 95-153 added provision authorizing appropriations not to exceed \$6,500,000 for fiscal year 1978.

1976—Pub. L. 94-336 added provision authorizing to be appropriated not to exceed \$5,600,000 for fiscal year 1977.

1975—Pub. L. 94-42 added provision authorizing the appropriation of an amount not to exceed \$1,500,000 for the transition period (July 1, through Sept. 30, 1976).

§ 1444. Removal of heavy metals and other toxic organic materials from sewage sludge of city of New York; study, etc.

The Administrator of the Environmental Protection Agency is authorized to conduct a study to assist the city of New York in evaluating the technological options available for the removal

of heavy metals and other toxic organic materials from the sewage sludge of the city of New York. The study shall also examine options available to reduce the amount of such pollutants entering the sewage system. The study is to be completed by July 1, 1981.

(Pub. L. 92-532, title II, § 205, as added Pub. L. 96-572, § 5, Dec. 22, 1980, 94 Stat. 3345.)

CHAPTER 38—POLLUTION CASUALTIES ON THE HIGH SEAS: UNITED STATES INTERVENTION

Sec.	Definitions.
1471.	Definitions.
1472.	Grave and imminent danger from oil pollution casualties to coastline or related interests of United States; Federal nonliability for Federal preventive measures on the high seas.
1473.	Consultations and determinations respecting creation of hazards to human health, etc.; criteria for determinations respecting grave and imminent dangers of major harmful consequences to United States coastline or related interests.
1474.	Federal intervention actions.
1475.	Consultation procedure.
1476.	Emergencies.
1477.	Reasonable measures; considerations.
1478.	Personal, flag state, and foreign state considerations.
1479.	Federal liability for unreasonable damages. <ul style="list-style-type: none"> (a) Payment of compensation. (b) Jurisdiction. (c) Burden of proof.
1480.	Notification by Secretary of State.
1481.	Violations; penalties.
1482.	Consultation for nomination and nomination of experts, negotiators, etc.; proposal of amendments to list of substances other than convention oil; Presidential acceptance of amendments. <ul style="list-style-type: none"> (a) Nomination of experts and proposal of amendments to list of substances. (b) Consultations for designation or nomination of negotiators, etc., provided for by convention and protocol. (c) Presidential acceptance of amendments to list of substances other than convention oil in accordance with protocol.
1483.	Foreign government ships; immunity.
1484.	Interpretation and administration; other right, duty, privilege, or immunity and other remedy unaffected.
1485.	Rules and regulations.
1486.	Revolving fund for Federal actions and activities.
1487.	Effective date.

CHAPTER REFERS TO IN OTHER SECTIONS

This chapter is referred to in section 1321 of this title; title 43 section 9611.

§ 1471. Definitions

As used in this chapter—

- (1) "a substance other than convention oil" means those oils, noxious substances, liquefied gases, and radioactive substances—
 - (A) enumerated in the protocol, or
 - (B) otherwise determined to be hazardous under section 1473(a) of this title;

CHAPTER 32—MARINE SANCTUARIES

- Sec. 1431. Definitions.
1432. Designation of sanctuaries.
- (a) Secretary of Commerce; consultation; proposed designations.
 - (b) Waters lying within the territorial limits of State or superjacent to subsoil and seabed within seaward boundary of coastal State.
 - (c) Sanctuaries which include areas of ocean waters outside territorial waters of United States.
 - (d) Biennial report to Congress.
 - (e) Hearings in coastal areas most directly affected.
 - (f) Terms of designation; rules and regulations; research; enforcement activities.
 - (g) Accordance of regulations with treaties, conventions, and other agreements.
 - (h) Disapproval of designation; concurrent resolution by both Houses of Congress.
1433. Penalties.
- (a) Fine.
 - (b) Notice and opportunity to be heard; civil action.
 - (c) Liability in rem.
 - (d) Injunction and other relief.
1434. Authorization of appropriations.

§ 1431. Definitions

The term "Secretary", when used in this chapter, means Secretary of Commerce. The term "State", when used in this chapter, means any of the several States or any territory or possession of the United States which has a popularly elected Governor.

(Pub. L. 92-532, title III, § 301, Oct. 23, 1972, 86 Stat. 1061; Pub. L. 96-332, § 1, Aug. 29, 1980, 94 Stat. 1057.)

CODIFICATION

Section 301 of Pub. L. 92-532 contained in the original the introductory phrase: "Notwithstanding the provisions of subsection (h) of section 3 of this Act" which has been omitted from the text of this section. Such section 3 of Pub. L. 92-532 is classified to section 1402 of Title 33, Navigation and Navigable Waters. See Additional Definitions note below.

AMENDMENTS

1980—Pub. L. 96-332 added provisions defining the term "State".

ADDITIONAL DEFINITIONS

Section 3 of Pub. L. 92-532, which is classified to section 1402 of Title 33, Navigation and Navigable Waters, defines for purposes of this chapter the terms "Administrator", "Ocean waters", "Material", "United States", "Person", "Dumping", "District Court of the United States", "Dredged material", "High-level radioactive waste", and "Transport" or "Transportation". The definition of the term "Secretary" in subsec. (h) thereof as meaning the Secretary of the Army is superseded for purposes of this chapter by this section defining the term "Secretary" as meaning the Secretary of Commerce. See Codification note above.

CONGRESSIONAL FINDINGS, POLICY, AND DECLARATION OF PURPOSE

For statement of Congressional findings, policy, and declaration of purpose governing this chapter as well as chapter 27 of Title 33, Navigation and Navigable Waters, see section 1401 of Title 33.

INTERNATIONAL COOPERATION

For direction that the Secretary of State seek effective international action and cooperation through the development of appropriate international rules and regulations in support of the policy of this chapter as well as that of chapter 27 of Title 33, Navigation and Navigable Waters, see section 1419 of Title 33.

ENVIRONMENTAL EFFECTS ABROAD OF MAJOR FEDERAL ACTIONS

For provisions relating to environmental effects abroad of major federal actions, see Ex. Ord. No. 12114, Jan. 4, 1979, 44 F.R. 1937, set out as a note under section 4321 of Title 42, The Public Health and Welfare.

FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

For provisions relating to the responsibility of the head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of Title 42, The Public Health and Welfare.

PREVENTION, CONTROL, AND ABATEMENT OF ENVIRONMENTAL POLLUTION AT FEDERAL FACILITIES

Ex. Ord. No. 11752, Dec. 17, 1973, 38 F.R. 34793, set out as a note under section 4331 of Title 42, The Public Health and Welfare, which related to the prevention, control, and abatement of environmental pollution at Federal facilities, was revoked by Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of Title 42.

§ 1432. Designation of sanctuaries

- (a) Secretary of Commerce; consultation; proposed designations

The Secretary, after consultation with the Secretaries of State, Defense, the Interior, and Transportation, the Administrator, and the heads of other interested Federal agencies, and with the approval of the President, may designate as marine sanctuaries those areas of the ocean waters, as far seaward as the outer edge of the Continental Shelf, as defined in the Convention of the Continental Shelf (15 U.S.T. 74; TIAS 5578), of other coastal waters where the tide ebbs and flows, or of the Great Lakes and their connecting waters, which he determines necessary for the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or esthetic values. The consultation shall include an opportunity to review and comment on a specific proposed designation.

- (b) Waters lying within the territorial limits of State or superjacent to subsoil and seabed within seaward boundary of coastal State

(1) Prior to designating a marine sanctuary which includes waters lying within the territorial limits of any State or superjacent to the subsoil and seabed within the seaward boundary of a coastal State, as that boundary is defined in section 1301 of title 43, the Secretary shall consult with, and give due consideration to the views of, the responsible officials of the State involved.

(2) A designation under this section shall become effective unless—

(A) the Governor of any State described in paragraph (1) certifies to the Secretary, before the end of the sixty-day period beginning on the date of the publication of the designation, that the designation or any of its terms described in subsection (f)(1) of this section, are unacceptable to his State, in which case those terms certified as unacceptable will not be effective in the waters described in paragraph (1) in such State until the Governor withdraws his certification of unacceptability; or

(B) both Houses of Congress adopt a concurrent resolution in accordance with subsection (h) of this section which disapproves the designation or any of its terms described in subsection (f)(1) of this section.

The Secretary may withdraw the designation after any such certification or resolution of disapproval. If the Secretary does not withdraw the designation, only those portions of the designation not certified as unacceptable under subparagraph (A) or not disapproved under subparagraph (B) shall take effect.

(c) Sanctuaries which include areas of ocean waters outside territorial waters of United States

When a marine sanctuary is designated, pursuant to this section, which includes an area of ocean waters outside the territorial jurisdiction of the United States, the Secretary of State shall take such actions as may be appropriate to enter into negotiations with other Governments for the purpose of arriving at necessary agreements with those Governments, in order to protect such sanctuary and to promote the purposes for which it was established.

(d) Biennial report to Congress

The Secretary shall submit a biennial report to the Congress, on or before March 1 of every other year beginning in 1984, setting forth a comprehensive review of his actions during the previous two fiscal years undertaken pursuant to the authority of this section, together with appropriate recommendation for legislation considered necessary for the designation and protection of marine sanctuaries.

(e) Hearings in coastal areas most directly affected

Before a marine sanctuary is designated under this section, the Secretary shall hold public hearings in the coastal areas which would be most directly affected by such designation, for the purpose of receiving and giving proper consideration to the views of any interested party. Such hearings shall be held no earlier than thirty days after the publication of a public notice thereof.

(f) Terms of designation; rules and regulations; research; enforcement activities

(1) The terms of the designation shall include the geographic area included within the sanctuary; the characteristics of the area that give it conservation, recreational, ecological or esthetic value; and the types of activities that will be subject to regulation by the Secretary in order to protect those characteristics. The terms of the designation may be modified only by the same procedures through which an original designation is made.

(2) The Secretary, after consultation with other interested Federal and State agencies, shall issue necessary and reasonable regulations to implement the terms of the designation and control the activities described in it, except that all permits, licenses, and other authorizations issued pursuant to any other authority shall be valid unless such regulations otherwise provide.

(3) The Secretary shall conduct such research as is necessary and reasonable to carry out the purposes of this chapter.

(4) The Secretary and the Secretary of the department in which the Coast Guard is operating shall conduct such enforcement activities as are necessary and reasonable to carry out the purposes of this chapter. The Secretary shall, whenever appropriate and in consultation with the Secretary of the department in which the Coast Guard is operating, utilize by agreement the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities, or State agencies or instrumentalities, whether on a reimbursable or a non-reimbursable basis in carrying out his responsibilities under this chapter.

(g) Accordance of regulations with treaties, conventions, and other agreements

The regulations issued pursuant to subsection (f) of this section shall be applied in accordance with recognized principles of international law, including treaties, conventions, and other agreements to which the United States is signatory. Unless the application of the regulations is in accordance with such principles or is otherwise authorized by an agreement between the United States and the foreign State of which the affected person is a citizen or, in the case of the crew of a foreign vessel, between the United States and flag State of the vessel, no regulation applicable to ocean waters outside the territorial jurisdiction of the United States shall be applied to a person not a citizen of the United States.

(h) Disapproval of designation; concurrent resolution by both Houses of Congress

(1) For purposes of subsection (b)(2)(B) of this section, the Secretary shall transmit to the Congress a designation of a marine sanctuary at the time of its publication. The concurrent resolution described in subsection (b)(2)(B) of this section is a concurrent resolution which is adopted by both Houses of Congress before the end of the first period of sixty calendar days of continuous session of Congress after the date on which the designation is transmitted, the matter after the resolving clause of which is as follows: "That the Congress does not favor the taking of effect of the following terms of the marine sanctuary designation numbered _____ transmitted to Congress by the Secretary of Commerce on _____, the blank space being filled with the number of the designation, the second blank space being filled with the date of the transmittal, and the third blank space being filled with the terms of the designation which are disapproved (or the phrase "the entire designation" if the entire designation is disapproved).

(2) For the purpose of paragraph (1) of this subsection—

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

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

(3) A designation which becomes effective, or that portion of a designation which takes effect under subsection (b) of this section, shall be printed in the Federal Register.

(Pub. L. 92-532, title III, § 302, Oct. 23, 1972, 86 Stat. 1061; Pub. L. 96-332, § 2, Aug. 29, 1980, 94 Stat. 1057; Pub. L. 97-375, title II, § 202(a), Dec. 21, 1982, 96 Stat. 1822.)

AMENDMENTS

1982—Subsec. (d). Pub. L. 97-375 substituted provision that the Secretary shall submit a biennial report on or before March 1 of every other year beginning in 1984 for provision that the Secretary submit an annual report on or before November 1 of each year, and substituted reference to the previous two fiscal years for reference to the previous fiscal year.

1980—Subsec. (b). Pub. L. 96-332, § 2(1), designated existing provisions as par. (1), struck out from par. (1) as so designated a provision that a designation under this section would become effective sixty days after it was published unless the Governor of any State involved, before the expiration of the sixty-day period, certified to the Secretary that the designation, or a specified portion thereof, was unacceptable to his State, in which case the designated sanctuary would not include the area certified as unacceptable until such time as the Governor withdrew his certification of unacceptability, and added par. (2).

Subsec. (f). Pub. L. 96-332, § 2(2), designated existing provisions as par. (2), added pars. (1), (3), and (4), and, in par. (2) as so designated, substituted "The Secretary, after consultation with other interested Federal and State agencies, shall issue necessary and reasonable regulations to implement the terms of the designation and control the activities described in it, except that all permits, licenses, and other authorizations issued pursuant to any other authority shall be valid unless such regulations otherwise provide" for "After a marine sanctuary has been designated under this section, the Secretary, after consultation with other interested Federal agencies, shall issue necessary and reasonable regulations to control any activities permitted within the designated marine sanctuary, and no permit, license, or other authorization issued pursuant to any other authority shall be valid unless the Secretary shall certify that the permitted activity is consistent with the purposes of this chapter and can be carried out within the regulations promulgated under this section".

Subsec. (h). Pub. L. 96-332, § 2(3), added subsec. (h).

§ 1433. Penalties

(a) Fine

Any person subject to the jurisdiction of the United States who violates any regulation issued pursuant to this chapter shall be liable to a civil penalty of not more than \$50,000 for each such violation, to be assessed by the Secretary. Each day of a continuing violation shall constitute a separate violation.

(b) Notice and opportunity to be heard: civil action

No penalty shall be assessed under this section until the person charged has been given notice and an opportunity to be heard. Upon

failure of the offending party to pay an assessed penalty, the Attorney General, at the request of the Secretary, shall commence action in the appropriate district court of the United States to collect the penalty and to seek such other relief as may be appropriate.

(c) Liability in rem

A vessel used in the violation of a regulation issued pursuant to this chapter shall be liable in rem for any civil penalty assessed for such violation and may be proceeded against in any district court of the United States having jurisdiction thereof.

(d) Injunction and other relief

The district courts of the United States shall have jurisdiction to restrain a violation of the regulations issued pursuant to this chapter, and to grant such other relief as may be appropriate. Actions shall be brought by the Attorney General in the name of the United States, either on his own initiative or at the request of the Secretary.

(Pub. L. 92-532, title III, § 303, Oct. 23, 1972, 86 Stat. 1062.)

§ 1434. Authorization of appropriations

There are authorized to be appropriated not to exceed \$10,000,000 for each of the fiscal years 1973, 1974, and 1975, not to exceed \$6,200,000 for fiscal year 1976, not to exceed \$1,550,000 for the transition period (July 1 through September 30, 1976), not to exceed \$500,000 for fiscal year 1977, not to exceed \$500,000 for fiscal year 1978, not to exceed \$2,250,000 for fiscal year 1981, not to exceed \$2,235,000 for fiscal year 1982, and not to exceed \$2,235,000 for fiscal year 1983, to carry out the provisions of this chapter, including the acquisition, development, and operation of marine sanctuaries designated under this chapter.

(Pub. L. 92-532, title III, § 304, Oct. 23, 1972, 86 Stat. 1063; Pub. L. 94-62, § 4, July 25, 1975, 89 Stat. 303; Pub. L. 94-326, § 4, June 30, 1976, 90 Stat. 725; Pub. L. 95-153, § 3, Nov. 4, 1977, 91 Stat. 1255; Pub. L. 96-332, § 3, Aug. 29, 1980, 94 Stat. 1059; Pub. L. 97-109, Dec. 26, 1981, 95 Stat. 1512.)

Federal Water Pollution Control Act (Clean Water
Act) of 1977*

* 33 U.S.C. §1251 (1977).

**CHAPTER 26—WATER POLLUTION
PREVENTION AND CONTROL**

**SUBCHAPTER 1—RESEARCH AND RELATED
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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1293a, 1492, 1502, 1503 of this title; title 16 sections 471i, 1456; title 28 section 189; title 30 sections 201, 1242, 1251, 1283, 1292, 1303, 1419; title 40 App. sections 212, 214; title 43 sections 2032, 3102, 4363a, 4368, 4908, 6901, 6905, 6907, 6949, 7877, 8302, 8744, 9603; title 43 sections 421h, 1577, 1596, 1597; title 49 App. section 1604.

SUBCHAPTER I—RESEARCH AND RELATED PROGRAMS

§ 1251. Congressional declaration of goals and policy

- (a) Restoration and maintenance of chemical, physical and biological integrity of Nation's waters; national goals for achievement of objective

The objective of this chapter is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this chapter—

- (1) It is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985;
- (2) It is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983;
- (3) It is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited;
- (4) It is the national policy that Federal financial assistance be provided to construct publicly owned waste treatment works;
- (5) It is the national policy that areawide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State; and
- (6) It is the national policy that a major research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into the navigable waters, waters of the contiguous zone, and the oceans.

- (b) Congressional recognition, preservation, and protection of primary responsibilities and rights of States

It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities

and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this chapter. It is the policy of Congress that the States manage the construction grant program under this chapter and implement the permit programs under sections 1342 and 1344 of this title. It is further the policy of the Congress to support and aid research relating to the prevention, reduction, and elimination of pollution and to provide Federal technical services and financial aid to State and interstate agencies and municipalities in connection with the prevention, reduction, and elimination of pollution.

- (c) Congressional policy toward Presidential activities with foreign countries

It is further the policy of Congress that the President, acting through the Secretary of State and such national and international organizations as he determines appropriate, shall take such action as may be necessary to insure that to the fullest extent possible all foreign countries shall take meaningful action for the prevention, reduction, and elimination of pollution in their waters and in international waters and for the achievement of goals regarding the elimination of discharge of pollutants and the improvement of water quality to at least the same extent as the United States does under its laws.

- (d) Administrator of Environmental Protection Agency to administer chapter

Except as otherwise expressly provided in this chapter, the Administrator of the Environmental Protection Agency (hereinafter in this chapter called "Administrator") shall administer this chapter.

- (e) Public participation in development, revision, and enforcement of any regulation, etc.

Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish regulations specifying minimum guidelines for public participation in such processes.

- (f) Procedures utilized for implementing chapter

It is the national policy that to the maximum extent possible the procedures utilized for implementing this chapter shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government.

- (g) Authority of States over water

It is the policy of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this chapter. It is the further policy of Congress that

nothing in this chapter shall be construed to supersede or abrogate rights to quantities of water which have been established by any State. Federal agencies shall co-operate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.

(June 30, 1948, ch. 758, title I, § 101, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 816, and amended Dec. 27, 1977, Pub. L. 95-217, §§ 5(a), 26(b), 91 Stat. 1567, 1575.)

CODIFICATION

The Federal Water Pollution Control Act, comprising this chapter, was originally enacted by act June 30, 1948, ch. 758, 82 Stat. 1185, and amended by acts July 17, 1952, ch. 927, 66 Stat. 753; July 9, 1956, ch. 518, 70 Stat. 468; June 25, 1959, Pub. L. 86-70, 73 Stat. 141; July 12, 1960, Pub. L. 86-624, 74 Stat. 411; July 29, 1961, Pub. L. 87-68, 75 Stat. 204; Oct. 2, 1965, Pub. L. 89-234, 79 Stat. 903; Nov. 3, 1966, Pub. L. 89-753, 80 Stat. 1246; Apr. 3, 1970, Pub. L. 91-224, 84 Stat. 91; Dec. 31, 1970, Pub. L. 91-611, 84 Stat. 1818; July 9, 1971, Pub. L. 92-50, 85 Stat. 124; Oct. 13, 1971, Pub. L. 92-137, 85 Stat. 379; Mar. 1, 1972, Pub. L. 92-240, 86 Stat. 47, and was formerly classified first to section 468 et seq. of this title and later to section 1151 et seq. of this title. The act is shown herein, however, as having been added by Pub. L. 92-500 without reference to such intervening amendments because of the extensive amendment, reorganization, and expansion of the act's provisions by Pub. L. 92-500.

AMENDMENTS

1977—Subsec. (b). Pub. L. 95-217, § 26(b), added provisions expressing Congressional policy that the States manage the construction grant program under this chapter and implement the permit program under sections 1342 and 1344 of this title.

Subsec. (g). Pub. L. 95-217, § 5(a), added subsec. (g).

SHORT TITLE OF 1961 AMENDMENT

Pub. L. 97-117, § 1, Dec. 29, 1961, 86 Stat. 1623, provided that "This Act [enacting sections 1296, 1299, and 1313a of this title, amending sections 1281 to 1285, 1287, 1291, 1292, 1296, 1311, and 1314 of this title, and enacting provisions set out as notes under sections 1311 and 1378 of this title] may be cited as the 'Municipal Wastewater Treatment Construction Grant Amendments of 1961'."

SHORT TITLE OF 1977 AMENDMENT

Section 1 of Pub. L. 95-217 provided: "That this Act [enacting sections 1281a, 1294 to 1296, and 1297 of this title, amending sections 1261, 1282, 1284 to 1286, 1289, 1292, 1293, 1311, 1314, 1316, 1317 to 1319, 1321 to 1324, 1328, 1341, 1342, 1344, 1345, 1362, 1364, 1375, and 1378 of this title, enacting provisions set out as notes under sections 1251, 1284, 1286, 1314, 1321, 1342, 1344, and 1378 of this title, and amending a provision set out as a note under this section] may be cited as the 'Clean Water Act of 1977'."

SHORT TITLE

Section 1 of Pub. L. 92-500 provided that: "That this Act [enacting this chapter, amending section 24 of Title 12, Banks and Banking, sections 633 and 636 of Title 15, Commerce and Trade, and section 711 of former Title 31, Money and Finance, and enacting provisions set out as notes under this section and sections 1281 and 1361 of this title] may be cited as the 'Federal Water Pollution Control Act Amendments of 1972'."

Section 618 of Act June 30, 1948, ch. 758, title V, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 806, and amended Dec. 27, 1977, Pub. L. 95-217, § 2, 91 Stat. 1486, provided that: "This Act [this chapter] may be

cited as the 'Federal Water Pollution Control Act' (commonly referred to as the Clean Water Act)."

SAVINGS PROVISIONS

Section 4 of Pub. L. 92-500 provided that:

"(a) No suit, action, or other proceeding lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under the Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act [Oct. 18, 1972] shall abate by reason of the taking effect of the amendment made by section 2 of this Act [which enacted this chapter]. The court may, on its own motion or that of any party made at any time within twelve months after such taking effect, allow the same to be maintained by or against the Administrator or such officer or employee.

"(b) All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to the Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act [Oct. 18, 1972], and pertaining to any functions, powers, requirements, and duties under the Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act [Oct. 18, 1972] shall continue in full force and effect after the date of enactment of this Act [Oct. 18, 1972] until modified or rescinded in accordance with the Federal Water Pollution Control Act as amended by this Act [this chapter].

"(c) The Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act [Oct. 18, 1972] shall remain applicable to all grants made from funds authorized for the fiscal year ending June 30, 1972, and prior fiscal years, including any increases in the monetary amount of any such grant which may be paid from authorizations (or fiscal years beginning after June 30, 1972, except as specifically otherwise provided in section 202 of the Federal Water Pollution Control Act as amended by this Act [section 1282 of this title] and in subsection (c) of section 3 of this Act."

SEPARABILITY OF PROVISIONS

Section 612 of act June 30, 1948, ch. 758, title V, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 804, provided that: "If any provision of this Act [this chapter], or the application of any provision of this Act [this chapter] to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Act [this chapter], shall not be affected thereby."

SEAFOOD PROCESSING STUDY; SUBMITTAL OF RESULTS TO CONGRESS NOT LATER THAN JANUARY 1, 1979

Pub. L. 95-217, § 74, Dec. 27, 1977, 91 Stat. 1609, provided that the Administrator of the Environmental Protection Agency conduct a study to examine the geographical, hydrological, and biological characteristics of marine waters to determine the effects of seafood processes which dispose of untreated natural wastes into such waters and to include in this study an examination of technologies which may be used in such processes to facilitate the use of the nutrients in these wastes or to reduce the discharge of such wastes into the marine environment and to submit the result of this study to Congress not later than Jan. 1, 1979.

STANDARDS

For provisions relating to the responsibility of the head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47797, set out as a note under section 4321 of Title 42, The Public Health and Welfare.

OVERSIGHT STUDY

Section 5 of Pub. L. 92-500 authorized the Comptroller General of the United States to conduct a study and review of the research, pilot, and demonstration programs related to prevention and control of water pollution conducted, supported, or assisted by any Federal agency pursuant to any Federal law or regulation and assess conflicts between these programs and their coordination and efficacy, and to report to Congress thereon by Oct. 1, 1973.

INTERNATIONAL TRADE STUDY

Section 6 of Pub. L. 92-500 provided that:
 "(a) The Secretary of Commerce, in cooperation with other interested Federal agencies and with representatives of industry and the public, shall undertake immediately an investigation and study to determine—

"(1) the extent to which pollution abatement and control programs will be imposed on, or voluntarily undertaken by, United States manufacturers in the near future and the probable short- and long-range effects of the costs of such programs (computed to the greatest extent practicable on an industry-by-industry basis) on (A) the production costs of such domestic manufacturers, and (B) the market prices of the goods produced by them;

"(2) the probable extent to which pollution abatement and control programs will be implemented in foreign industrial nations in the near future and the extent to which the production costs (computed to the greatest extent practicable on an industry-by-industry basis) of foreign manufacturers will be affected by the costs of such programs;

"(3) the probable competitive advantage which any article manufactured in a foreign nation will likely have in relation to a comparable article made in the United States if that foreign nation—

"(A) does not require its manufacturers to implement pollution abatement and control programs.

"(B) requires a lesser degree of pollution abatement and control in its programs, or

"(C) in any way reimburses or otherwise subsidizes its manufacturers for the costs of such program;

"(4) alternative means by which any competitive advantage accruing to the products of any foreign nation as a result of any factor described in paragraph (3) may be (A) accurately and quickly determined, and (B) equalized, for example, by the imposition of a surcharge or duty, on a foreign product in an amount necessary to compensate for such advantage; and

"(5) the impact, if any, which the imposition of a compensating tariff of other equalizing measure may have in encouraging foreign nations to implement pollution and abatement control programs.

"(b) The Secretary shall make an initial report to the President and Congress within six months after the date of enactment of this section (Oct. 18, 1972) of the results of the study and investigation carried out pursuant to this section and shall make additional reports thereafter at such times as he deems appropriate taking into account the development of relevant data, but not less than once every twelve months."

INTERNATIONAL AGREEMENTS

Section 7 of Pub. L. 92-500 provided that: "The President shall undertake to enter into international agreement to apply uniform standards of performance for the control of the discharge and emission of pollutants from new sources, uniform controls over the discharge and emission of toxic pollutants, and uniform controls over the discharge of pollutants into the ocean. For this purpose the President shall negotiate multilateral treaties, conventions, resolutions, or other agreements, and formulate, present, or support proposals at the United Nations and other appropriate international forums."

NATIONAL POLICIES AND GOAL STUDY

Section 10 of Pub. L. 92-500 authorized the President to make a full and complete investigation and study of all national policies and goals established by law to determine what the relationship should be between these policies and goals, taking into account the resources of the Nation, and to report the results of his investigation and study together with his recommendations to Congress not later than two years after Oct. 18, 1972.

EFFICIENCY STUDY

Section 11 of Pub. L. 92-500 authorized the President, by utilization of the General Accounting Office, to conduct a full and complete investigation and study of ways and means of most effectively using all of the various resources, facilities, and personnel of the Federal Government in order to most efficiently carry out the provisions of this chapter and to report the results of his investigation and study together with his recommendations to Congress not later than two hundred and seventy days after Oct. 18, 1972.

SEX DISCRIMINATION

Section 13 of Pub. L. 92-500 provided that: "No person in the United States shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance under this Act (see Short Title note above) the Federal Water Pollution Control Act (this chapter), or the Environmental Financing Act (set out as a note under section 1281 of this title). This section shall be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964 (section 2000d et seq. of Title 42, The Public Health and Welfare). However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a discriminatee."

PREVENTION, CONTROL, AND ABATEMENT OF ENVIRONMENTAL POLLUTION AT FEDERAL FACILITIES

Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of Title 42, The Public Health and Welfare, provides for the prevention, control, and abatement of environmental pollution at federal facilities.

EXECUTIVE ORDER NO. 11848

Ex. Ord. No. 11848, July 20, 1970, 35 F.R. 11677, which related to the delegation of Presidential functions, was superseded by Ex. Ord. No. 11735, Aug. 3, 1972, 38 F.R. 21242, set out as a note under section 1321 of this title.

EX. ORD. NO. 11742. DELEGATION OF FUNCTIONS TO SECRETARY OF STATE RESPECTING THE NEGOTIATION OF INTERNATIONAL AGREEMENTS RELATING TO THE ENHANCEMENT OF THE ENVIRONMENT

Ex. Ord. No. 11742, Oct. 23, 1972, 38 F.R. 29457, provided:

"Under and by virtue of the authority vested in me by section 301 of title 3 of the United States Code and as President of the United States, I hereby authorize and empower the Secretary of State, in coordination with the Council on Environmental Quality, the Environmental Protection Agency, and other appropriate Federal agencies, to perform, without the approval, ratification, or other action of the President, the functions vested in the President by Section 7 of the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500; 86 Stat. 898) with respect to international agreements relating to the enhancement of the environment.

RICHARD NIXON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1252, 1311 of this title.

§ 1252. Comprehensive programs for water pollution control

(a) Preparation and development

The Administrator shall, after careful investigation, and in cooperation with other Federal agencies, State water pollution control agencies, interstate agencies, and the municipalities and industries involved, prepare or develop comprehensive programs for preventing, reducing, or eliminating the pollution of the navigable waters and ground waters and improving the sanitary condition of surface and underground waters. In the development of such comprehensive programs due regard shall be given to the improvements which are necessary to conserve such waters for the protection and propagation of fish and aquatic life and wildlife, recreational purposes, and the withdrawal of such waters for public water supply, agricultural, industrial, and other purposes. For the purpose of this section, the Administrator is authorized to make joint investigations with any such agencies of the condition of any waters in any State or States, and of the discharges of any sewage, industrial wastes, or substance which may adversely affect such waters.

(b) Planning for reservoirs; storage for regulation of streamflow

(1) In the survey or planning of any reservoir by the Corps of Engineers, Bureau of Reclamation, or other Federal agency, consideration shall be given to inclusion of storage for regulation of streamflow, except that any such storage and water releases shall not be provided as a substitute for adequate treatment or other methods of controlling waste at the source.

(2) The need for and the value of storage for regulation of streamflow (other than for water quality) including but not limited to navigation, salt water intrusion, recreation, esthetics, and fish and wildlife, shall be determined by the Corps of Engineers, Bureau of Reclamation, or other Federal agencies.

(3) The need for, the value of, and the impact of, storage for water quality control shall be determined by the Administrator, and his views on these matters shall be set forth in any report or presentation to Congress proposing authorization or construction of any reservoir including such storage.

(4) The value of such storage shall be taken into account in determining the economic value of the entire project of which it is a part, and costs shall be allocated to the purpose of regulation of streamflow in a manner which will insure that all project purposes, share equitably in the benefit of multiple-purpose construction.

(5) Costs of regulation of streamflow features incorporated in any Federal reservoir or other impoundment under the provisions of this chapter shall be determined and the beneficiaries identified and if the benefits are widespread or national in scope, the costs of such features shall be nonreimbursable.

(6) No license granted by the Federal Energy Regulatory for a hydroelectric power project shall include storage for regulation of streamflow for the purpose of water quality control unless the Administrator shall recommend its inclusion and such reservoir storage capacity shall not exceed such proportion of the total storage required for the water quality control plan as the drainage area of such reservoir bears to the drainage area of the river basin or basins involved in such water quality control plan.

(c) Basins; grants to State agencies

(1) The Administrator shall, at the request of the Governor of a State, or a majority of the Governors when more than one State is involved, make a grant to pay not to exceed 50 per centum of the administrative expenses of a planning agency for a period not to exceed three years, which period shall begin after October 18, 1973, if such agency provides for adequate representation of appropriate State, interstate, local, or (when appropriate) international interests in the basin or portion thereof involved and is capable of developing an effective, comprehensive water quality control plan for a basin or portion thereof.

(2) Each planning agency receiving a grant under this subsection shall develop a comprehensive pollution control plan for the basin or portion thereof which—

(A) is consistent with any applicable water quality standards effluent and other limitations, and thermal discharge regulations established pursuant to current law within the basin;

(B) recommends such treatment works as will provide the most effective and economical means of collection, storage, treatment, and elimination of pollutants and recommends means to encourage both municipal and industrial use of such works;

(C) recommends maintenance and improvement of water quality within the basin or portion thereof and recommends methods of adequately financing those facilities as may be necessary to implement the plan; and

(D) as appropriate, is developed in cooperation with, and is consistent with any comprehensive plan prepared by the Water Resources Council, any areawide waste management plans developed pursuant to section 1288 of this title, and any State plan developed pursuant to section 1313(e) of this title.

(3) For the purposes of this subsection the term "basin" includes, but is not limited to, rivers and their tributaries, streams, coastal waters, sounds, estuaries, bays, lakes, and portions thereof as well as the lands drained thereby.

(d) Report to Congress

The Administrator, after consultation with the States, and River Basin Commissions established under the Water Resources Planning Act [42 U.S.C. 1962 et seq.], shall submit a report to Congress on or before July 1, 1978, which analyzes the relationship between programs under this chapter, and the programs by which State

and Federal agencies allocate quantities of water. Such report shall include recommendations concerning the policy in section 1251(g) of this title to improve coordination of efforts to reduce and eliminate pollution in concert with programs for managing water resources.

(June 30, 1948, ch. 758, title I, § 102, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 817, and amended Aug. 4, 1977, Pub. L. 95-91, title IV, § 402(a)(1)(A), 91 Stat. 583; Dec. 27, 1977, Pub. L. 95-217, § 5(b), 91 Stat. 1567.)

REFERENCES IN TEXT

The Water Resources Planning Act, referred to in subsec. (d), is Pub. L. 89-80, July 22, 1965, 79 Stat. 244, as amended, which is classified generally to chapter 19B (§ 1962 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1962 of Title 42 and Tables.

AMENDMENTS

1977—Subsec. (d). Pub. L. 95-217 added subsec. (d).

TRANSFER OF FUNCTIONS

"Federal Energy Regulatory Commission" was substituted for "Federal Power Commission" in subsec. (b)(6) on authority of Pub. L. 95-91, title IV, § 402(a)(1)(A), Aug. 4, 1977, 91 Stat. 583, which is classified to section 7172(a)(1)(A) of Title 42, The Public Health and Welfare.

EXECUTIVE ORDER NO. 10014

Ex. Ord. No. 10014, Nov. 5, 1948, 13 P.R. 6001, which related to the cooperation of Federal and State agencies to prevent pollution of surface and underground waters, was superseded by Ex. Ord. No. 11258, Nov. 17, 1965, 36 P.R. 14683.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1252a, 1375 of this title.

§ 1252a. Reservoir projects, water storage; modifications; storage for other than for water quality; opinion of Federal agency, committee resolutions of approval; provisions inapplicable to projects with certain prescribed water quality benefits in relation to total project benefits

In the case of any reservoir project authorized for construction by the Corps of Engineers, Bureau of Reclamation, or other Federal agency when the Administrator of the Environmental Protection Agency determines pursuant to section 1252(b) of this title that any storage in such project for regulation of streamflow for water quality is not needed, or is needed in a different amount, such project may be modified accordingly by the head of the appropriate agency, and any storage no longer required for water quality may be utilized for other authorized purposes of the project when, in the opinion of the head of such agency, such use is justified. Any such modification of a project where the benefits attributable to water quality are 15 per centum or more but not greater than 25 per centum of the total project benefits shall take effect only upon the adoption of resolutions approving such modification by the appropriate committees of the Senate and House of Representatives. The provisions of the section shall not apply to any project where the benefits attributable to water quality exceed 25 per centum of the total project benefits.

(Pub. L. 92-251, title I, § 65, Mar. 7, 1974, 88 Stat. 30.)

CODIFICATION

Section was not enacted as part of the Federal Water Pollution Control Act which comprises this chapter.

§ 1253. Interstate cooperation and uniform laws

(a) The Administrator shall encourage cooperative activities by the States for the prevention, reduction, and elimination of pollution, encourage the enactment of improved and, so far as practicable, uniform State laws relating to the prevention, reduction, and elimination of pollution; and encourage compacts between States for the prevention and control of pollution.

(b) The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for (1) cooperative effort and mutual assistance for the prevention and control of pollution and the enforcement of their respective laws relating thereto, and (2) the establishment of such agencies, joint or otherwise, as they may deem desirable for making effective such agreements and compacts. No such agreement or compact shall be binding or obligatory upon any State a party thereto unless and until it has been approved by the Congress.

(June 30, 1948, ch. 758, title I, § 103, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 818.)

§ 1254. Research, investigations, training, and information

(a) Establishment of national programs; cooperation; investigations; water quality surveillance systems; reports

The Administrator shall establish national programs for the prevention, reduction, and elimination of pollution and as part of such programs shall—

(1) in cooperation with other Federal, State, and local agencies, conduct and promote the coordination and acceleration of, research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of pollution;

(2) encourage, cooperate with, and render technical services to pollution control agencies and other appropriate public or private agencies, institutions, and organizations, and individuals, including the general public, in the conduct of activities referred to in paragraph (1) of this subsection;

(3) conduct, in cooperation with State water pollution control agencies and other interested agencies, organizations and persons, public investigations concerning the pollution of any navigable waters, and report on the results of such investigations;

(4) establish advisory committees composed of recognized experts in various aspects of pollution and representatives of the public to assist in the examination and evaluation of

research progress and proposals and to avoid duplication of research:

(5) In cooperation with the States, and their political subdivisions, and other Federal agencies establish, equip, and maintain a water quality surveillance system for the purpose of monitoring the quality of the navigable waters and ground waters and the contiguous zone and the oceans and the Administrator shall, to the extent practicable, conduct such surveillance by utilizing the resources of the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, the Geological Survey, and the Coast Guard, and shall report on such quality in the report required under subsection (a) of section 1375 of this title; and

(6) initiate and promote the coordination and acceleration of research designed to develop the most effective practicable tools and techniques for measuring the social and economic costs and benefits of activities which are subject to regulation under this chapter; and shall transmit a report on the results of such research to the Congress not later than January 1, 1974.

(b) Authorized activities of Administrator

In carrying out the provisions of subsection (a) of this section the Administrator is authorized to—

(1) collect and make available, through publications and other appropriate means, the results of and other information, including appropriate recommendations by him in connection therewith, pertaining to such research and other activities referred to in paragraph (1) of subsection (a) of this section;

(2) cooperate with other Federal departments and agencies, State water pollution control agencies, interstate agencies, other public and private agencies, institutions, organizations, industries involved, and individuals, in the preparation and conduct of such research and other activities referred to in paragraph (1) of subsection (a) of this section;

(3) make grants to State water pollution control agencies, interstate agencies, other public or nonprofit private agencies, institutions, organizations, and individuals, for purposes stated in paragraph (1) of subsection (a) of this section;

(4) contract with public or private agencies, institutions, organizations, and individuals, without regard to section 3324(a) and (b) of title 31 and section 5 of title 41, referred to in paragraph (1) of subsection (a) of this section;

(5) establish and maintain research fellowships at public or nonprofit private educational institutions or research organizations;

(6) collect and disseminate, in cooperation with other Federal departments and agencies, and with other public or private agencies, institutions, and organizations having related responsibilities, basic data on chemical, physical, and biological effects of varying water quality and other information pertaining to pollution and the prevention, reduction, and elimination thereof; and

(7) develop effective and practical processes, methods, and prototype devices for the pre-

vention, reduction, and elimination of pollution.

(c) Research and studies on harmful effects of pollutants; cooperation with Secretary of Health and Human Services

In carrying out the provisions of subsection (a) of this section the Administrator shall conduct research on, and survey the results of other scientific studies on, the harmful effects on the health or welfare of persons caused by pollutants. In order to avoid duplication of effort, the Administrator shall, to the extent practicable, conduct such research in cooperation with and through the facilities of the Secretary of Health and Human Services.

(d) Sewage treatment; identification and measurement of effects of pollutants; augmented streamflow

In carrying out the provisions of this section the Administrator shall develop and demonstrate under varied conditions (including conducting such basic and applied research, studies, and experiments as may be necessary):

(1) Practicable means of treating municipal sewage, and other waterborne wastes to implement the requirements of section 1281 of this title;

(2) Improved methods and procedures to identify and measure the effects of pollutants, including those pollutants created by new technological developments; and

(3) Methods and procedures for evaluating the effects on water quality of augmented streamflows to control pollution not susceptible to other means of prevention, reduction, or elimination.

(e) Field laboratory and research facilities

The Administrator shall establish, equip, and maintain field laboratory and research facilities, including, but not limited to, one to be located in the northeastern area of the United States, one in the Middle Atlantic area, one in the southeastern area, one in the midwestern area, one in the southwestern area, one in the Pacific Northwest, and one in the State of Alaska, for the conduct of research, investigations, experiments, field demonstrations and studies, and training relating to the prevention, reduction and elimination of pollution. Insofar as practicable, each such facility shall be located near institutions of higher learning in which graduate training in such research might be carried out. In conjunction with the development of criteria under section 1343 of this title, the Administrator shall construct the facilities authorized for the National Marine Water Quality Laboratory established under this subsection.

(f) Great Lakes water quality research

The Administrator shall conduct research and technical development work, and make studies, with respect to the quality of the waters of the Great Lakes, including an analysis of the present and projected future water quality of the Great Lakes under varying conditions of waste treatment and disposal, an evaluation of the water quality needs of those to be

served by such waters, an evaluation of municipal, industrial, and vessel waste treatment and disposal practices with respect to such waters, and a study of alternate means of solving pollution problems (including additional waste treatment measures) with respect to such waters.

(g) Treatment works pilot training programs; employment needs forecasting; training projects and grants; research fellowships; technical training; report to the President and transmittal to Congress

(1) For the purpose of providing an adequate supply of trained personnel to operate and maintain existing and future treatment works and related activities, and for the purpose of enhancing substantially the proficiency of those engaged in such activities, the Administrator shall finance pilot programs, in cooperation with State and interstate agencies, municipalities, educational institutions, and other organizations and individuals, of manpower development and training and retraining of persons in, on entering into, the field of operation and maintenance of treatment works and related activities. Such program and any funds expended for such a program shall supplement, not supplant, other manpower and training programs and funds available for the purposes of this paragraph. The Administrator is authorized, under such terms and conditions as he deems appropriate, to enter into agreements with one or more States, acting jointly or severally, or with other public or private agencies or institutions for the development and implementation of such a program.

(2) The Administrator is authorized to enter into agreements with public and private agencies and institutions, and individuals to develop and maintain an effective system for forecasting the supply of, and demand for, various professional and other occupational categories needed for the prevention, reduction, and elimination of pollution in each region, State, or area of the United States and, from time to time, to publish the results of such forecasts.

(3) In furtherance of the purposes of this chapter, the Administrator is authorized to—

(A) make grants to public or private agencies and institutions and to individuals for training projects, and provide for the conduct of training by contract with public or private agencies and institutions and with individuals without regard to section 3324(a) and (b) of title 31 and section 5 of title 41;

(B) establish and maintain research fellowships in the Environmental Protection Agency with such stipends and allowances, including traveling and subsistence expenses, as he may deem necessary to procure the assistance of the most promising research fellows; and

(C) provide, in addition to the program established under paragraph (1) of this subsection, training in technical matters relating to the causes, prevention, reduction, and elimination of pollution for personnel of public agencies and other persons with suitable qualifications.

(4) The Administrator shall submit, through the President, a report to the Congress not

later than December 31, 1973, summarizing the actions taken under this subsection and the effectiveness of such actions, and setting forth the number of persons trained, the occupational categories for which training was provided, the effectiveness of other Federal, State, and local training programs in this field, together with estimates of future needs, recommendations on improving training programs, and such other information and recommendations, including legislative recommendations, as he deems appropriate.

(h) Lake pollution

The Administrator is authorized to enter into contracts with, or make grants to, public or private agencies and organizations and individuals for (A) the purpose of developing and demonstrating new or improved methods for the prevention, removal, reduction, and elimination of pollution in lakes, including the undesirable effects of nutrients and vegetation, and (B) the construction of publicly owned research facilities for such purpose.

(i) Oil pollution control studies

The Administrator, in cooperation with the Secretary of the Department in which the Coast Guard is operating, shall—

(1) engage in such research, studies, experiments, and demonstrations as he deems appropriate, relative to the removal of oil from any waters and to the prevention, control, and elimination of oil and hazardous substances pollution;

(2) publish from time to time the results of such activities; and

(3) from time to time, develop and publish in the Federal Register specifications and other technical information on the various chemical compounds used in the control of oil and hazardous substances spills.

In carrying out this subsection, the Administrator may enter into contracts with, or make grants to, public or private agencies and organizations and individuals.

(j) Solid waste disposal equipment for vessels

The Secretary of the department in which the Coast Guard is operating shall engage in such research, studies, experiments, and demonstrations as he deems appropriate relative to equipment which is to be installed on board a vessel and is designed to receive, retain, treat, or discharge human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes with particular emphasis on equipment to be installed on small recreational vessels. The Secretary of the department in which the Coast Guard is operating shall report to Congress the results of such research, studies, experiments, and demonstrations prior to the effective date of any regulations established under section 1322 of this title. In carrying out this subsection the Secretary of the department in which the Coast Guard is operating may enter into contracts with, or make grants to, public or private organizations and individuals.

(k) Land acquisition

In carrying out the provisions of this section relating to the conduct by the Administrator of demonstration projects and the development of field laboratories and research facilities, the Administrator may acquire land and interests therein by purchase, with appropriated or donated funds, by donation, or by exchange for acquired or public lands under his jurisdiction which he classifies as suitable for disposition. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal, the values shall be equalized by the payment of cash to the grantor or to the Administrator as the circumstances require.

(l) Collection and dissemination of scientific knowledge on effects and control of pesticides in water

(1) The Administrator shall, after consultation with appropriate local, State, and Federal agencies, public and private organizations, and interested individuals, as soon as practicable but not later than January 1, 1973, develop and issue to the States for the purpose of carrying out this chapter the latest scientific knowledge available in indicating the kind and extent of effects on health and welfare which may be expected from the presence of pesticides in the water in varying quantities. He shall revise and add to such information whenever necessary to reflect developing scientific knowledge.

(2) The President shall, in consultation with appropriate local, State, and Federal agencies, public and private organizations, and interested individuals, conduct studies and investigations of methods to control the release of pesticides into the environment which study shall include examination of the persistency of pesticides in the water environment and alternatives thereto. The President shall submit reports, from time to time, on such investigations to Congress together with his recommendations for any necessary legislation.

(m) Waste oil disposal study

(1) The Administrator shall, in an effort to prevent degradation of the environment from the disposal of waste oil, conduct a study of (A) the generation of used engine, machine, cooling, and similar waste oil, including quantities generated, the nature and quality of such oil, present collecting methods and disposal practices, and alternate uses of such oil; (B) the long-term, chronic biological effects of the disposal of such waste oil; and (C) the potential market for such oils, including the economic and legal factors relating to the sale of products made from such oils, the level of subsidy, if any, needed to encourage the purchase by public and private nonprofit agencies of products from such oil, and the practicability of Federal procurement, on a priority basis, of products made from such oil. In conducting such study, the Administrator shall consult with affected industries and other persons.

(2) The Administrator shall report the preliminary results of such study to Congress within six months after October 18, 1972, and shall submit a final report to Congress within 18 months after such date.

(n) Comprehensive studies of effects of pollution on estuaries and estuarine zones; reports

(1) The Administrator shall, in cooperation with the Secretary of the Army, the Secretary of Agriculture, the Water Resources Council, and with other appropriate Federal, State, interstate, or local public bodies and private organizations, institutions, and individuals, conduct and promote, and encourage contributions to, continuing comprehensive studies of the effects of pollution, including sedimentation, in the estuaries and estuarine zones of the United States on fish and wildlife, on sport and commercial fishing, on recreation, on water supply and water power, and on other beneficial purposes. Such studies shall also consider the effect of demographic trends, the exploitation of mineral resources and fossil fuels, land and industrial development, navigation, flood and erosion control, and other uses of estuaries and estuarine zones upon the pollution of the waters therein.

(2) In conducting such studies, the Administrator shall assemble, coordinate, and organize all existing pertinent information on the Nation's estuaries and estuarine zones; carry out a program of investigations and surveys to supplement existing information in representative estuaries and estuarine zones; and identify the problems and areas where further research and study are required.

(3) The Administrator shall submit to Congress, from time to time, reports of the studies authorized by this subsection but at least one such report during any six-year period. Copies of each such report shall be made available to all interested parties, public and private.

(4) For the purpose of this subsection, the term "estuarine zones" means an environmental system consisting of an estuary and those transitional areas which are consistently influenced or affected by water from an estuary such as, but not limited to, salt marshes, coastal and intertidal areas, bays, harbors, lagoons, in-shore waters, and channels, and the term "estuary" means all or part of the mouth of a river or stream or other body of water having unimpaired natural connection with open sea and within which the sea water is measurably diluted with fresh water derived from land drainage.

(o) Methods of reducing total flow of sewage and unnecessary water consumption; reports

(1) The Administrator shall conduct research and investigations on devices, systems, incentives, pricing policy, and other methods of reducing the total flow of sewage, including, but not limited to, unnecessary water consumption in order to reduce the requirements for, and the costs of, sewage and waste treatment services. Such research and investigations shall be directed to develop devices, systems, policies, and methods capable of achieving the maximum reduction of unnecessary water consumption.

(2) The Administrator shall report the preliminary results of such studies and investigations to the Congress within one year after October 18, 1972, and annually thereafter in the report required under subsection (a) of section

1375 of this title. Such report shall include recommendations for any legislation that may be required to provide for the adoption and use of devices, systems, policies, or other methods of reducing water consumption and reducing the total flow of sewage. Such report shall include an estimate of the benefits to be derived from adoption and use of such devices, systems, policies, or other methods and also shall reflect estimates of any increase in private, public, or other cost that would be occasioned thereby.

(p) Agricultural pollution

In carrying out the provisions of subsection (a.) of this section the Administrator shall, in cooperation with the Secretary of Agriculture, other Federal agencies, and the States, carry out a comprehensive study and research program to determine new and improved methods and the better application of existing methods of preventing, reducing, and eliminating pollution from agriculture, including the legal, economic, and other implications of the use of such methods.

(q) Sewage in rural areas; national clearinghouse for alternative treatment information

(1) The Administrator shall conduct a comprehensive program of research and investigation and pilot project implementation into new and improved methods of preventing, reducing, storing, collecting, treating, or otherwise eliminating pollution from sewage in rural and other areas where collection of sewage in conventional, communitywide sewage collection systems is impractical, uneconomical, or otherwise infeasible, or where soil conditions or other factors preclude the use of septic tank and drainage field systems.

(2) The Administrator shall conduct a comprehensive program of research and investigation and pilot project implementation into new and improved methods for the collection and treatment of sewage and other liquid wastes combined with the treatment and disposal of solid wastes.

(3) The Administrator shall establish, either within the Environmental Protection Agency, or through contract with an appropriate public or private non-profit organization, a national clearinghouse which shall (A) receive reports and information resulting from research, demonstrations, and other projects funded under this chapter related to paragraph (1) of this subsection and to subsection (e)(2) of section 1255 of this title; (B) coordinate and disseminate such reports and information for use by Federal and State agencies, municipalities, institutions, and persons in developing new and improved methods pursuant to this subsection; and (C) provide for the collection and dissemination of reports and information relevant to this subsection from other Federal and State agencies, institutions, universities, and persons.

(r) Research grants to colleges and universities

The Administrator is authorized to make grants to colleges and universities to conduct basic research into the structure and function of freshwater aquatic ecosystems, and to improve understanding of the ecological characteristics necessary to the maintenance of the

chemical, physical, and biological integrity of freshwater aquatic ecosystems.

(s) River Study Centers

The Administrator is authorized to make grants to one or more institutions of higher education (regionally located and to be designated as "River Study Centers") for the purpose of conducting and reporting on interdisciplinary studies on the nature of river systems, including hydrology, biology, ecology, economics, the relationship between river uses and land uses, and the effects of development within river basins on river systems and on the value of water resources and water related activities. No such grant in any fiscal year shall exceed \$1,000,000.

(t) Thermal discharges

The Administrator shall, in cooperation with State and Federal agencies and public and private organizations, conduct continuing comprehensive studies of the effects and methods of control of thermal discharges. In evaluating alternative methods of control the studies shall consider (1) such data as are available on the latest available technology, economic feasibility including cost-effectiveness analysis, and (2) the total impact on the environment, considering not only water quality but also air quality, land use, and effective utilization and conservation of freshwater and other natural resources. Such studies shall consider methods of minimizing adverse effects and maximizing beneficial effects of thermal discharges. The results of these studies shall be reported by the Administrator as soon as practicable, but not later than 270 days after October 18, 1972, and shall be made available to the public and the States, and considered as they become available by the Administrator in carrying out section 1326 of this title and by the States in proposing thermal water quality standards.

(u) Authorization of appropriations

There is authorized to be appropriated (1) \$100,000,000 per fiscal year for the fiscal year ending June 30, 1973, the fiscal year ending June 30, 1974, and the fiscal year ending June 30, 1975, and not to exceed \$14,039,000 for the fiscal year ending September 30, 1980, and not to exceed \$30,697,000 for the fiscal year ending September 30, 1981, and not to exceed \$22,770,000 for the fiscal year ending September 30, 1982, for carrying out the provisions of this section, other than subsections (g)(1) and (2), (p), (r), and (t) of this section, except that such authorizations are not for any research, development, or demonstration activity pursuant to such provisions; (2) not to exceed \$7,500,000 for fiscal years 1973, 1974, and 1975, \$2,000,000 for fiscal year 1977, \$3,000,000 for fiscal year 1978, \$3,000,000 for fiscal year 1979, \$3,000,000 for fiscal year 1980, \$3,000,000 for fiscal year 1981, and \$3,000,000 for fiscal year 1982, for carrying out the provisions of subsection (g)(1) of this section; (3) not to exceed \$2,800,000 for fiscal years 1973, 1974, and 1975, \$1,000,000 for fiscal year 1977, \$1,500,000 for fiscal year 1978, \$1,500,000 for fiscal year 1979, \$1,500,000 for fiscal year 1980, \$1,500,000 for

fiscal year 1981, and \$1,500,000 for fiscal year 1982, for carrying out the provisions of subsection (g)(2) of this section; (4) not to exceed \$10,000,000 for each of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (p) of this section; (5) not to exceed \$15,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (r) of this section; and (6) not to exceed \$10,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (t) of this section.

(June 30, 1948, ch. 758, title I, § 104, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 819, and amended Dec. 28, 1973, Pub. L. 93-207, § 1(l), 87 Stat. 906; Jan. 2, 1975, Pub. L. 93-592, § 1, 88 Stat. 1924; Dec. 27, 1977, Pub. L. 95-217, § 4(a), (b), 6, 7, 91 Stat. 1568, 1567; Nov. 2, 1978, Pub. L. 95-578, § 1(a), 92 Stat. 2467; Oct. 17, 1979, Pub. L. 96-88, title V, § 509(b), 93 Stat. 695; Oct. 21, 1980, Pub. L. 96-483, § 1(a), 94 Stat. 2360.)

CODIFICATION

In subsecs. (b)(4) and (g)(3)(A), "section 3324(a) and (b) of title 31" was substituted for reference to section 3648 of the Revised Statutes (31 U.S.C. 629) on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1980—Subsec. (u). Pub. L. 96-483 in par. (1) added authorization of not to exceed \$20,697,000 and \$22,770,000 for fiscal years ending Sept. 30, 1981 and 1982, respectively; in par. (2) added authorization of the sum of \$3,000,000 for each of fiscal years 1981 and 1982, and in par. (3) added authorization of the sum of \$1,500,000 for each of fiscal years 1981 and 1982.

1978—Subsec. (u)(1). Pub. L. 95-578 appropriated of not to exceed \$14,039,000 for fiscal year ending Sept. 30, 1980 and prohibited use of authorizations for any research, development, or demonstration activity pursuant to provisions of this section.

1977—Subsec. (n)(3). Pub. L. 95-217, § 6, substituted "any six-year period" for "any three year period".

Subsec. (q)(3). Pub. L. 95-217, § 7, added par. (3).
Subsec. (u)(2). Pub. L. 95-217, § 4(a), substituted "1975, \$2,000,000 for fiscal year 1977, \$3,000,000 for fiscal year 1978, \$3,000,000 for fiscal year 1979, and \$3,000,000 for fiscal year 1980," for "1975".

Subsec. (u)(3). Pub. L. 95-217, § 4(b), substituted "1975, \$1,000,000 for fiscal year 1977, \$1,500,000 for fiscal year 1978, \$1,500,000 for fiscal year 1979, and \$1,500,000 for fiscal year 1980," for "1975".

1975—Subsec. (u)(1). Pub. L. 93-592, § 1(a), substituted "the fiscal year ending June 30, 1974, and the fiscal year ending June 30, 1975," for "and the fiscal year ending June 30, 1974,".

Subsec. (u)(2). Pub. L. 93-592, § 1(b), substituted "fiscal years 1973, 1974, and 1975" for "fiscal years 1973 and 1974".

Subsec. (u)(3). Pub. L. 93-592, § 1(c), substituted "fiscal years 1973, 1974, and 1975" for "fiscal year 1973".

Subsec. (u)(4). Pub. L. 93-592, § 1(d), substituted "June 30, 1974, and June 30, 1975," for "and June 30, 1974,".

Subsec. (u)(5). Pub. L. 93-592, § 1(e), substituted "June 30, 1974, and June 30, 1975," for "and June 30, 1974,".

Subsec. (u)(6). Pub. L. 93-592, § 1(f), substituted "June 30, 1974, and June 30, 1975," for "and June 30, 1974,".

1973—Subsec. (u)(2). Pub. L. 93-207 substituted "fiscal years 1973 and 1974" for "fiscal year 1973".

CHANGE OF NAME

"Secretary of Health and Human Services" was substituted for "Secretary of Health, Education, and Welfare" in subsec. (c) pursuant to section 569(b) of Pub. L. 95-68 which is classified to section 3508(b) of Title 20, Education.

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, § 102(f), 203(a), 44 P.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees.

COLUMBIA RIVER BASIN SYSTEM; PROTECTION FROM OIL SPILLS AND DISCHARGES; CRITERIA FOR EVALUATION AND REPORT TO CONGRESS BY COMMANDANT OF COAST GUARD IN CONSULTATION WITH FEDERAL, ETC., AGENCIES

Pub. L. 95-308, § 6, June 30, 1978, 92 Stat. 356, set forth Congressional findings and declarations and evaluation criteria with respect to protection from oil spills and discharges and betterment of the Columbia River Basin system, with such evaluation by the Commandant of the Coast Guard to begin within 180 days after June 30, 1978, and immediate submission of the evaluation to appropriate Congressional committees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1288, 1293, 1322, 1378 of this title.

§ 1255. Grants for research and development

(a) Demonstration projects covering storm waters, advanced waste treatment and water purification methods, and joint treatment systems for municipal and industrial wastes

The Administrator is authorized to conduct in the Environmental Protection Agency, and to make grants to any State, municipality, or intermunicipal or interstate agency for the purpose of assisting in the development of—

(1) any project which will demonstrate a new or improved method of preventing, reducing, and eliminating the discharge into any waters of pollutants from sewers which carry storm water or both storm water and pollutants; or

(2) any project which will demonstrate advanced waste treatment and water purification methods (including the temporary use of new or improved chemical additives which provide substantial immediate improvements to existing treatment processes), or new or improved methods of joint treatment systems for municipal and industrial wastes;

and to include in such grants such amounts as are necessary for the purpose of reports, plans, and specifications in connection therewith.

- (b) Demonstration projects for advanced treatment and environmental enhancement techniques to control pollution in river basins

The Administrator is authorized to make grants to any State or States or interstate agency to demonstrate, in river basins or portions thereof, advanced treatment and environmental enhancement techniques to control pollution from all sources, within such basins or portions thereof, including nonpoint sources, together with in stream water quality improvement techniques.

- (c) Research and demonstration projects for prevention of water pollution by industry

In order to carry out the purposes of section 1311 of this title, the Administrator is authorized to (1) conduct in the Environmental Protection Agency, (2) make grants to persons, and (3) enter into contracts with persons, for research and demonstration projects for prevention of pollution of any waters by industry including, but not limited to, the prevention, reduction, and elimination of the discharge of pollutants. No grant shall be made for any project under this subsection unless the Administrator determines that such project will develop or demonstrate a new or improved method of treating industrial wastes or otherwise prevent pollution by industry, which method shall have industrywide application.

- (d) Accelerated and priority development of waste management and waste treatment methods and identification and measurement methods

In carrying out the provisions of this section, the Administrator shall conduct, on a priority basis, an accelerated effort to develop, refine, and achieve practical application of:

- (1) waste management methods applicable to point and nonpoint sources of pollutants to eliminate the discharge of pollutants, including, but not limited to, elimination of runoff of pollutants and the effects of pollutants from in-place or accumulated sources;
- (2) advanced waste treatment methods applicable to point and nonpoint sources, including in-place or accumulated sources of pollutants, and methods for reclaiming and recycling water and confining pollutants so they will not migrate to cause water or other environmental pollution; and
- (3) improved methods and procedures to identify and measure the effects of pollutants on the chemical, physical, and biological integrity of water, including those pollutants created by new technological developments.

- (e) Research and demonstration projects covering agricultural pollution and pollution from sewage in rural areas; dissemination of information

(1) The Administrator is authorized to (A) make, in consultation with the Secretary of Agriculture, grants to persons for research and demonstration projects with respect to new and improved methods of preventing, reducing, and eliminating pollution from agriculture, and (B) disseminate, in cooperation with the Secretary of Agriculture, such information obtained under this subsection, section 1294(p) of this

title, and section 1314 of this title as will encourage and enable the adoption of such methods in the agricultural industry.

(2) The Administrator is authorized, (A) in consultation with other interested Federal agencies, to make grants for demonstration projects with respect to new and improved methods of preventing, reducing, storing, collecting, treating, or otherwise eliminating pollution from sewage in rural and other areas where collection of sewage in conventional, community-wide sewage collection systems is impractical, uneconomical, or otherwise infeasible, or where soil conditions or other factors preclude the use of septic tank and drainage field systems, and (B) in cooperation with other interested Federal and State agencies, to disseminate such information obtained under this subsection as will encourage and enable the adoption of new and improved methods developed pursuant to this subsection.

- (f) Limitations

Federal grants under subsection (a) of this section shall be subject to the following limitations:

(1) No grant shall be made for any project unless such project shall have been approved by the appropriate State water pollution control agency or agencies and by the Administrator;

(2) No grant shall be made for any project in an amount exceeding 75 per centum of cost thereof as determined by the Administrator; and

(3) No grant shall be made for any project unless the Administrator determines that such project will serve as a useful demonstration for the purpose set forth in clause (1) or (2) of subsection (a) of this section.

- (g) Maximum grants

Federal grants under subsections (c) and (d) of this section shall not exceed 75 per centum of the cost of the project.

- (h) Authorization of appropriations

For the purpose of this section there is authorized to be appropriated \$75,000,000 per fiscal year for the fiscal year ending June 30, 1973, the fiscal year ending June 30, 1974, and the fiscal year ending June 30, 1975, and from such appropriations at least 10 per centum of the funds actually appropriated in each fiscal year shall be available only for the purposes of subsection (e) of this section.

- (i) Assistance for research and demonstration projects

The Administrator is authorized to make grants to a municipality to assist in the costs of operating and maintaining a project which received a grant under this section, section 1254 of this title, or section 1263 of this title prior to December 27, 1977, so as to reduce the operation and maintenance costs borne by the recipients of services from such project to costs comparable to those for projects assisted under subchapter II of this chapter.

¹ So in original.

(j) Assistance for recycle, reuse, and land treatment projects

The Administrator is authorized to make a grant to any grantee who received an increased grant pursuant to section 1282(a)(2) of this title. Such grant may pay up to 100 per centum of the costs of technical evaluation of the operation of the treatment works, costs of training of persons (other than employees of the grantee), and costs of disseminating technical information on the operation of the treatment works.

(June 30, 1948, ch. 758, title I, § 105, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 88 Stat. 825, and amended Jan. 2, 1975, Pub. L. 93-582, § 2, 88 Stat. 1925; Dec. 27, 1977, Pub. L. 95-217, §§ 8, 9, 91 Stat. 1568.)

AMENDMENTS

1977—Subsec. (i). Pub. L. 95-217, § 8, added subsec. (i).

Subsec. (j). Pub. L. 95-217, § 9, added subsec. (j).
1973—Subsec. (h). Pub. L. 93-592 substituted "the fiscal year ending June 30, 1974, and the fiscal year ending June 30, 1975," for "and the fiscal year ending June 30, 1974."

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, § 102(f), 203(a), 44 F.R. 33663, 33666, 63 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1254, 1263, 1379 of this title.

§ 1256. Grants for pollution control programs

(a) Authorization of appropriations for State and interstate programs

There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purpose of this section—

(1) \$80,000,000 for the fiscal year ending June 30, 1973; and

(2) \$75,000,000 for the fiscal year ending June 30, 1974, and the fiscal year ending June 30, 1975, \$100,000,000 per fiscal year for the fiscal years 1977, 1978, 1979, and 1980, \$75,000,000 per fiscal year for the fiscal years 1981 and 1982;

for grants to States and to interstate agencies to assist them in administering programs for the prevention, reduction, and elimination of pollution, including enforcement directly or through appropriate State law enforcement officers or agencies.

(b) Allotments

From the sums appropriated in any fiscal year, the Administrator shall make allotments

to the several States and interstate agencies in accordance with regulations promulgated by him on the basis of the extent of the pollution problem in the respective States.

(c) Maximum annual payments

The Administrator is authorized to pay to each State and interstate agency each fiscal year either—

(1) the allotment of such State or agency for such fiscal year under subsection (b) of this section, or

(2) the reasonable costs as determined by the Administrator of developing and carrying out a pollution program by such State or agency during such fiscal year,

whichever amount is the lesser.

(d) Limitations

No grant shall be made under this section to any State or interstate agency for any fiscal year when the expenditure of non-Federal funds by such State or interstate agency during such fiscal year for the recurrent expenses of carrying out its pollution control program are less than the expenditure by such State or interstate agency of non-Federal funds for such recurrent program expenses during the fiscal year ending June 30, 1971.

(e) Grants prohibited to States not establishing water quality monitoring procedures or adequate emergency and contingency plans

Beginning in fiscal year 1974 the Administrator shall not make any grant under this section to any State which has not provided or is not carrying out as a part of its program—

(1) the establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, and to compile and analyze data on (including classification according to eutrophic condition), the quality of navigable waters and to the extent practicable, ground waters including biological monitoring; and provision for annually updating such data and including it in the report required under section 1315 of this title;

(2) authority comparable to that in section 1364 of this title and adequate contingency plans to implement such authority.

(f) Conditions

Grants shall be made under this section on condition that—

(1) Such State (or interstate agency) files with the Administrator within one hundred and twenty days after October 18, 1972:

(A) a summary report of the current status of the State pollution control program, including the criteria used by the State in determining priority of treatment works; and

(B) such additional information, data, and reports as the Administrator may require.

(2) No federally assumed enforcement as defined in section 1319(a)(2) of this title is in effect with respect to such State or interstate agency.

(3) Such State (or interstate agency) submits within one hundred and twenty days after October 18, 1972, and before October 1

of each year thereafter for the Administrator's approval of its program for the prevention, reduction, and elimination of pollution in accordance with purposes and provisions of this chapter in such form and content as the Administrator may prescribe.

(g) Reallocation of unpaid allotments

Any sums allotted under subsection (b) of this section in any fiscal year which are not paid shall be reallocated by the Administrator in accordance with regulations promulgated by him.

(June 30, 1948, ch. 758, title I, § 106, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 827, and amended Jan. 2, 1975, Pub. L. 93-592, § 3, 88 Stat. 1925; Apr. 21, 1976, Pub. L. 94-273, § 3(20), 90 Stat. 377; Dec. 27, 1977, Pub. L. 95-217, § 4(c), 91 Stat. 1566; Oct. 21, 1980, Pub. L. 96-483, § 1(b), 94 Stat. 2360.)

AMENDMENTS

1980—Subsec. (a)(2). Pub. L. 96-483 added authorization of the sum of \$78,000,000 per fiscal year for the fiscal years 1981 and 1982.

1977—Subsec. (a)(2). Pub. L. 95-217 substituted "and the fiscal year ending June 30, 1975, \$106,000,000 per fiscal year for the fiscal years 1977, 1978, 1979, and 1980" for "and the fiscal year ending June 30, 1975".

1974—Subsec. (f)(3). Pub. L. 94-273 substituted "October" for "July".

1975—Subsec. (a)(2). Pub. L. 93-592 substituted "June 30, 1974, and the fiscal year ending June 30, 1978" for "June 30, 1974".

SECTIONS REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1376 of this title.

§ 1257. Mine water pollution control demonstrations

(a) Comprehensive approaches to elimination or control of mine water pollution

The Administrator in cooperation with the Appalachian Regional Commission and other Federal agencies is authorized to conduct, to make grants for, or to contract for, projects to demonstrate comprehensive approaches to the elimination or control of acid or other mine water pollution resulting from active or abandoned mining operations and other environmental pollution affecting water quality within all or part of a watershed or river basin, including siltation from surface mining. Such projects shall demonstrate the engineering and economic feasibility and practicality of various abatement techniques which will contribute substantially to effective and practical methods of acid or other mine water pollution elimination or control, and other pollution affecting water quality, including techniques that demonstrate the engineering and economic feasibility and practicality of using sewage sludge materials and other municipal wastes to diminish or prevent pollution affecting water quality from acid, sedimentation, or other pollutants and in such projects to restore affected lands to usefulness for forestry, agriculture, recreation, or other beneficial purposes.

(b) Consistency of projects with objectives of Appalachian Regional Development Act of 1965

Prior to undertaking any demonstration project under this section in the Appalachian

region (as defined in section 403 of the Appalachian Regional Development Act of 1965, as amended [40 App. U.S.C. 403]), the Appalachian Regional Commission shall determine that such demonstration project is consistent with the objectives of the Appalachian Regional Development Act of 1965, as amended [40 App. U.S.C. 1 et seq].

(c) Watershed selection

The Administrator, in selecting watersheds for the purposes of this section, shall be satisfied that the project area will not be affected adversely by the influx of acid or other mine water pollution from nearby sources.

(d) Conditions upon Federal participation

Federal participation in such projects shall be subject to the conditions—

(1) that the State shall acquire any land or interests therein necessary for such project; and

(2) that the State shall provide legal and practical protection to the project area to insure against any activities which will cause future acid or other mine water pollution.

(e) Authorization of appropriations

There is authorized to be appropriated \$30,000,000 to carry out the provisions of this section, which sum shall be available until expended.

(June 30, 1948, ch. 758, title I, § 107, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 828.)

REFERENCES IN TEXT

The Appalachian Regional Development Act of 1965, as amended, referred to in subsec. (b), is Pub. L. 89-4, Mar. 9, 1965, 79 Stat. 5, as amended, which is classified generally to § 1 et seq. of Title 40, App. Public Buildings, Property, and Works. For complete classification of this Act to the Code, see section 1 of Title 40 App. and Tables.

SECTIONS REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1376 of this title.

§ 1257a. State demonstration programs for cleanup of abandoned mines for use as waste disposal sites; authorization of appropriations

The Administrator of the Environmental Protection Agency is authorized to make grants to States to undertake a demonstration program for the cleanup of State-owned abandoned mines which can be used as hazardous waste disposal sites. The State shall pay 10 per centum of project costs. At a minimum, the Administrator shall undertake projects under such program in the States of Ohio, Illinois, and West Virginia. There are authorized to be appropriated \$10,000,000 per fiscal year for each of the fiscal years ending September 30, 1982, September 30, 1983, and September 30, 1984, to carry out this section. Such projects shall be undertaken in accordance with all applicable laws and regulations.

(Pub. L. 96-483, § 12, Oct. 21, 1980, 94 Stat. 2363.)

CODIFICATION

Section was not enacted as part of the Federal Water Pollution Control Act which comprises this chapter.

§ 1258. Pollution control in the Great Lakes

(a) Demonstration projects

The Administrator, in cooperation with other Federal departments, agencies, and instrumentalities is authorized to enter into agreements with any State, political subdivision, interstate agency, or other public agency, or combination thereof, to carry out one or more projects to demonstrate new methods and techniques and to develop preliminary plans for the elimination or control of pollution, within all or any part of the watersheds of the Great Lakes. Such projects shall demonstrate the engineering and economic feasibility and practicality of removal of pollutants and prevention of any polluting matter from entering into the Great Lakes in the future and other reduction and remedial techniques which will contribute substantially to effective and practical methods of pollution prevention, reduction, or elimination.

(b) Conditions of Federal participation

Federal participation in such projects shall be subject to the condition that the State, political subdivision, interstate agency, or other public agency, or combination thereof, shall pay not less than 25 per centum of the actual project costs, which payment may be in any form, including, but not limited to, land or interests therein that is needed for the project, and personal property or services the value of which shall be determined by the Administrator.

(c) Authorization of appropriations

There is authorized to be appropriated \$20,000,000 to carry out the provisions of subsections (a) and (b) of this section, which sum shall be available until expended.

(d) Lake Erie demonstration program

(1) In recognition of the serious conditions which exist in Lake Erie, the Secretary of the Army, acting through the Chief of Engineers, is directed to design and develop a demonstration waste water management program for the rehabilitation and environmental repair of Lake Erie. Prior to the initiation of detailed engineering and design, the program, along with the specific recommendations of the Chief of Engineers, and recommendations for its financing, shall be submitted to the Congress for statutory approval. This authority is in addition to, and not in lieu of, other waste water studies aimed at eliminating pollution emanating from select sources around Lake Erie.

(2) This program is to be developed in cooperation with the Environmental Protection Agency, other interested departments, agencies, and instrumentalities of the Federal Government, and the States and their political subdivisions. This program shall set forth alternative systems for managing waste water on a regional basis and shall provide local and State governments with a range of choices as to the type of system to be used for the treatment of waste water. These alternative systems shall include

both advanced waste treatment technology and land disposal systems including aerated treatment-spray irrigation technology and will also include provisions for the disposal of solid wastes, including sludge. Such program should include measures to control point sources of pollution, area sources of pollution, including acid-mine drainage, urban runoff and rural runoff, and in place sources of pollution, including bottom loads, sludge banks, and polluted harbor dredgings.

(e) Authorization of appropriations for Lake Erie demonstration program

There is authorized to be appropriated \$5,000,000 to carry out the provisions of subsection (d) of this section, which sum shall be available until expended.

(June 30, 1948, ch. 758, title I, § 108, as added Oct. 18, 1972, Pub. L. 92-500, § 2. 86 Stat. 828.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1376 of this title.

§ 1259. Training grants and contracts

(a) The Administrator is authorized to make grants to or contracts with institutions of higher education, or combinations of such institutions, to assist them in planning, developing, strengthening, improving, or carrying out programs or projects for the preparation of undergraduate students to enter an occupation which involves the design, operation, and maintenance of treatment works, and other facilities whose purpose is water quality control. Such grants or contracts may include payment of all or part of the cost of programs or projects such as—

(A) planning for the development or expansion of programs or projects for training persons in the operation and maintenance of treatment works;

(B) training and retraining of faculty members;

(C) conduct of short-term or regular session institutes for study by persons engaged in, or preparing to engage in, the preparation of students preparing to enter an occupation involving the operation and maintenance of treatment works;

(D) carrying out innovative and experimental programs of cooperative education involving alternate periods of full-time or part-time academic study at the institution and periods of full-time or part-time employment involving the operation and maintenance of treatment works; and

(E) research into, and development of, methods of training students or faculty, including the preparation of teaching materials and the planning of curriculum.

(b)(1) The Administrator may pay 100 per centum of any additional cost of construction of treatment works required for a facility to train and upgrade waste treatment works operation and maintenance personnel and the costs of other State treatment works operator training programs, including mobile training

units, classroom rental, specialized instructors, and instructional material.

(2) The Administrator shall make no more than one grant for such additional construction in any State (to serve a group of States, where, in his judgment, efficient training programs require multi-State programs), and shall make such grant after consultation with and approval by the State or States on the basis of (A) the suitability of such facility for training operation and maintenance personnel for treatment works throughout such State or States; and (B) a commitment by the State agency or agencies to carry out at such facility a program of training approved by the Administrator. In any case where a grant is made to serve two or more States, the Administrator is authorized to make an additional grant for a supplemental facility in each such State.

(3) The Administrator may make such grant out of the sums allocated to a State under section 1258 of this title, except that in no event shall the Federal cost of any such training facilities exceed \$500,000.

(4) The Administrator may exempt a grant under this section from any requirement under section 1284(a)(3) of this title. Any grantee who received a grant under this section prior to enactment of the Clean Water Act of 1977 shall be eligible to have its grant increased by funds made available under such Act.

(June 30, 1948, ch. 758, title I, § 109, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 829, and amended Dec. 27, 1977, Pub. L. 95-217, § 10, 91 Stat. 1563.)

REFERENCES IN TEXT

Prior to the date of enactment of the Clean Water Act of 1977, referred to in subsec. (b)(4), means prior to the enactment of Pub. L. 95-217, Dec. 27, 1977, § 1 Stat. 1566, which was approved Dec. 27, 1977.

Such Act, referred to in subsec. (b)(4), means Pub. L. 95-217, Dec. 27, 1977, 91 Stat. 1566, as amended, known as the Clean Water Act of 1977. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 1261 of this title and Tables.

AMENDMENTS

1977—Subsec. (b)(1). Pub. L. 95-217, § 10(c), (d), substituted "cost of construction of treatment works required for a facility to train and upgrade waste treatment works operation and maintenance personnel and for the costs of other State treatment works operator training programs, including mobile training units, classroom rental, specialized instructors, and instructional material" for "cost of construction of a treatment works required for a facility to train and upgrade waste treatment works operation and maintenance personnel".

Subsec. (b)(2). Pub. L. 95-217, § 10(e), authorized the Administrator to make an additional grant for a supplemental facility in each of the States in any case where a grant is made to serve two or more States.

Subsec. (b)(3). Pub. L. 95-217, § 10(a), substituted "\$500,000" for "\$250,000".

Subsec. (b)(4). Pub. L. 95-217, § 10(b), added par. (4).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1260, 1262, 1376 of this title.

§ 1260. Applications; allocation

(1) A grant or contract authorized by section 1259 of this title may be made only upon appli-

cation to the Administrator at such time or times and containing such information as he may prescribe, except that no such application shall be approved unless it—

(A) sets forth programs, activities, research, or development for which a grant is authorized under section 1259 of this title and describes the relation to any program set forth by the applicant in an application, if any, submitted pursuant to section 1261 of this title;

(B) provides such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant under this section; and

(C) provides for making such reports, in such form and containing such information, as the Administrator may require to carry out his functions under this section, and for keeping such records and for affording such access thereto as the Administrator may find necessary to assure the correctness and verification of such reports.

(2) The Administrator shall allocate grants or contracts under section 1259 of this title in such manner as will most nearly provide an equitable distribution of the grants or contracts throughout the United States among institutions of higher education which show promise of being able to use funds effectively for the purpose of this section.

(3)(A) Payments under this section may be used in accordance with regulations of the Administrator, and subject to the terms and conditions set forth in an application approved under paragraph (1), to pay part of the compensation of students employed in connection with the operation and maintenance of treatment works, other than as an employee in connection with the operation and maintenance of treatment works or as an employee in any branch of the Government of the United States, as part of a program for which a grant has been approved pursuant to this section.

(B) Departments and agencies of the United States are encouraged, to the extent consistent with efficient administration, to enter into arrangements with institutions of higher education for the full-time, part-time, or temporary employment, whether in the competitive or exempt service, of students enrolled in programs set forth in applications approved under paragraph (1).

(June 30, 1948, ch. 758, title I, § 110, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 830.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1261, 1262, 1376 of this title.

§ 1261. Scholarships

(1) The Administrator is authorized to award scholarships in accordance with the provisions of this section for undergraduate study by persons who plan to enter an occupation involving the operation and maintenance of treatment works. Such scholarships shall be awarded for such periods as the Administrator may determine but not to exceed four academic years.

(2) The Administrator shall allocate scholarships under this section among institutions of higher education with programs approved under the provisions of this section for the use of individuals accepted into such programs in such manner and according to such plan as will insofar as practicable—

(A) provide an equitable distribution of such scholarships throughout the United States; and

(B) attract recent graduates of secondary schools to enter an occupation involving the operation and maintenance of treatment works.

(3) The Administrator shall approve a program of any institution of higher education for the purposes of this section only upon application by the institution and only upon his finding—

(A) that such program has a principal objective the education and training of persons in the operation and maintenance of treatment works;

(B) that such program is in effect and of high quality, or can be readily put into effect and may reasonably be expected to be of high quality;

(C) that the application describes the relation of such program to any program, activity, research, or development set forth by the applicant in an application, if any, submitted pursuant to section 1260 of this title; and

(D) that the application contains satisfactory assurances that (i) the institution will recommend to the Administrator for the award of scholarships under this section, for study in such program, only persons who have demonstrated to the satisfaction of the institution a serious intent, upon completing the program, to enter an occupation involving the operation and maintenance of treatment works, and (ii) the institution will make reasonable continuing efforts to encourage recipients of scholarships under this section, enrolled in such program, to enter occupations involving the operation and maintenance of treatment works upon completing the program.

(4)(A) The Administrator shall pay to persons awarded scholarships under this section such stipends (including such allowances for subsistence and other expenses for such persons and their dependents) as he may determine to be consistent with prevailing practices under comparable supported programs.

(B) The Administrator shall (in addition to the stipends paid to persons under paragraph (1)) pay to the institution of higher education at which such person is pursuing his course of study such amount as he may determine to be consistent with prevailing practices under comparable federally supported programs.

(5) A person awarded a scholarship under the provisions of this section shall continue to receive the payments provided in this section only during such periods as the Administrator finds that he is maintaining satisfactory proficiency and devoting full time to study or research in the field in which such scholarship was awarded in an institution of higher educa-

tion, and is not engaging in gainful employment other than employment approved by the Administrator by or pursuant to regulation.

(8) The Administrator shall by regulation provide that any person awarded a scholarship under this section shall agree in writing to enter and remain in an occupation involving the design, operation, or maintenance of treatment works for such period after completion of his course of studies as the Administrator determines appropriate.

(June 30, 1948, ch. 758, title I, § 111, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 831.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1260, 1262, 1375 of this title.

§ 1262. Definitions and authorizations

(a) As used in sections 1259 through 1262 of this title—

(1) The term "institution of higher education" means an educational institution described in the first sentence of section 1141 of title 20 (other than an institution of any agency of the United States) which is accredited by a nationally recognized accrediting agency or association approved by the Administrator for this purpose. For purposes of this subsection, the Administrator shall publish a list of nationally recognized accrediting agencies or associations which he determines to be reliable authority as to the quality of training offered.

(2) The term "academic year" means an academic year or its equivalent, as determined by the Administrator.

(b) The Administrator shall annually report his activities under sections 1259 through 1262 of this title, including recommendations for needed revisions in the provisions thereof.

(c) There are authorized to be appropriated \$25,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, \$8,000,000 for the fiscal year ending September 30, 1977, \$7,000,000 for the fiscal year ending September 30, 1978, \$7,000,000 for the fiscal year ending September 30, 1979, \$7,000,000 for the fiscal year ending September 30, 1980, \$7,000,000 for the fiscal year ending September 30, 1981, and \$7,000,000 for the fiscal year ending September 30, 1982, to carry out sections 1259 through 1262 of this title.

(June 30, 1948, ch. 758, title I, § 112, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 832, and amended Jan. 2, 1975, Pub. L. 93-592, § 4, 88 Stat. 1925; Dec. 27, 1977, Pub. L. 95-217, § 4(d), 91 Stat. 1566; Oct. 21, 1980, Pub. L. 96-483, § 1(c), 94 Stat. 2380.)

AMENDMENTS

1980—Subsec. (c). Pub. L. 96-483 added authorization of the sum of \$7,000,000 for each of fiscal years ending Sept. 30, 1981 and 1982.

1977—Subsec. (c). Pub. L. 95-217 substituted "June 30, 1975, \$8,000,000 for the fiscal year ending September 30, 1977, \$7,000,000 for the fiscal year ending September 30, 1978, \$7,000,000 for the fiscal year ending September 30, 1979, and \$7,000,000 for the fiscal year ending September 30, 1980." for "June 30, 1975."

1978—Subsec. (c), Pub. L. 95-592 substituted "June 30, 1974, and June 30, 1976," for "and June 30, 1974."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1376 of this title.

§ 1263. Alaska village demonstration projects

(a) Central community facilities for safe water; elimination or control of pollution

The Administrator is authorized to enter into agreements with the State of Alaska to carry out one or more projects to demonstrate methods to provide for central community facilities for safe water and eliminate or control of pollution in those native villages of Alaska without such facilities. Such project shall include provisions for community safe water supply systems, toilets, bathing and laundry facilities, sewage disposal facilities, and other similar facilities, and educational and informational facilities and programs relating to health and hygiene. Such demonstration projects shall be for the further purpose of developing preliminary plans for providing such safe water and such elimination or control of pollution for all native villages in such State.

(b) Utilization of personnel and facilities of Department of Health and Human Services

In carrying out this section the Administrator shall cooperate with the Secretary of Health and Human Services for the purpose of utilizing such of the personnel and facilities of that Department as may be appropriate.

(c) Omitted

(d) Authorization of appropriations

There is authorized to be appropriated not to exceed \$2,000,000 to carry out this section. In addition, there is authorized to be appropriated to carry out this section not to exceed \$300,000 for the fiscal year ending September 30, 1978, and \$220,000 for the fiscal year ending September 30, 1979.

(e) Study to develop comprehensive program for achieving sanitation services; report to Congress

The Administrator is authorized to coordinate with the Secretary of the Department of Health and Human Services, the Secretary of the Department of Housing and Urban Development, the Secretary of the Department of the Interior, the Secretary of the Department of Agriculture, and the heads of any other departments or agencies he may deem appropriate to conduct a joint study with representatives of the State of Alaska and the appropriate Native organizations (as defined in Public Law 92-203) to develop a comprehensive program for achieving adequate sanitation services in Alaska villages. This study shall be coordinated with the programs and projects authorized by sections 1254(q) and 1255(a)(2) of this title. The Administrator shall submit a report of the results of the study, together with appropriate supporting data and such recommendations as he deems desirable, to the Committee on Environment and Public Works of the Senate and to the Committee on Public Works and Transportation of the House of Representatives not

later than December 31, 1979. The Administrator shall also submit recommended administrative actions, procedures, and any proposed legislation necessary to implement the recommendations of the study no later than June 30, 1980.

(f) Technical, financial, and management assistance

The Administrator is authorized to provide technical, financial and management assistance for operation and maintenance of the demonstration projects constructed under this section, until such time as the recommendations of subsection (e) of this section are implemented.

(g) Definitions

For the purpose of this section, the term "village" shall mean an incorporated or unincorporated community with a population of ten to six hundred people living within a two-mile radius. The term "sanitation services" shall mean water supply, sewage disposal, solid waste disposal and other services necessary to maintain generally accepted standards of personal hygiene and public health.

(June 30, 1948, ch. 758, title I, § 113, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 832, and amended Dec. 27, 1977, Pub. L. 95-217, § 11, 91 Stat. 1568; Oct. 17, 1979, Pub. L. 96-88, title V, § 509(b), 93 Stat. 695.)

REFERENCES IN TEXT

Public Law 92-203, referred to in subsec. (e), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 683, as amended, known as the Alaska Native Claims Settlement Act, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

CODIFICATION

Subsec. (c) authorized the Administrator to report to Congress the results of the demonstration project accompanied by his recommendations for the establishment of a statewide project not later than July 1, 1973.

AMENDMENTS

1977—Subsec. (d), Pub. L. 95-217, § 11(b), authorized additional appropriations of not to exceed \$200,000 for the fiscal year ending Sept. 30, 1978, and \$220,000 for the fiscal year ending Sept. 30, 1979, to carry out this section.

Subsecs. (e) to (g), Pub. L. 95-217, § 11(a), added subsec. (e), (f), and (g).

CHANGE OF NAME

"Secretary of Health and Human Services" was substituted for "Secretary of Health, Education, and Welfare" in subsec. (b), and "Secretary of the Department of Health and Human Services" was substituted for "Secretary of the Department of Health, Education, and Welfare" in subsec. (e), pursuant to section 509(b) of Pub. L. 96-88 which is classified to section 3509(b) of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1265, 1376 of this title.

§ 1264. Omitted

CODIFICATION

Section, act June 30, 1948, ch. 758, title I, § 114, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 833, authorized the Administrator, in consultation with the Tahoe Regional Planning Agency, the Secretary of Agriculture, other Federal agencies, representatives of State and local governments, and members of the public, to conduct a thorough and complete study on the need of extending Federal oversight and control in order to preserve the fragile ecology of Lake Tahoe and to report the results of this study to Congress not later than one year after Oct. 18, 1972.

§ 1265. In-place toxic pollutants

The Administrator is directed to identify the location of in-place pollutants with emphasis on toxic pollutants in harbors and navigable waterways and is authorized, acting through the Secretary of the Army, to make contracts for the removal and appropriate disposal of such materials from critical port and harbor areas. There is authorized to be appropriated \$15,000,000 to carry out the provisions of this section, which sum shall be available until expended.

(June 30, 1948, ch. 758, title I, § 115, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 833.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1266, 1378 of this title.

§ 1266. Hudson River reclamation demonstration project

(a) The Administrator is authorized to enter into contracts and other agreements with the State of New York to carry out a project to demonstrate methods for the selective removal of polychlorinated biphenyls contaminating bottom sediments of the Hudson River, treating such sediments as required, burying such sediments in secure landfills, and installing monitoring systems for such landfills. Such demonstration project shall be for the purpose of determining the feasibility of indefinite storage in secure landfills of toxic substances and of ascertaining the improvement of the rate of recovery of a toxic contaminated national waterway. No pollutants removed pursuant to this paragraph shall be placed in any landfill unless the Administrator first determines that disposal of the pollutants in such landfill would provide a higher standard of protection of the public health, safety, and welfare than disposal of such pollutants by any other method including, but not limited to, incineration or a chemical destruction process.

(b) The Administrator is authorized to make grants to the State of New York to carry out this section from funds allotted to such State under section 1285(a) of this title, except that the amount of any such grant shall be equal to 75 per centum of the cost of the project and such grant shall be made on condition that non-Federal sources provide the remainder of the cost of such project. The authority of this section shall be available until September 30, 1983. Funds allotted to the State of New York under section 1285(a) of this title shall be avail-

able under this subsection only to the extent that funds are not available, as determined by the Administrator, to the State of New York for the work authorized by this section under section 1265 or 1321 of this title or a comprehensive hazardous substance response and clean up fund. Any funds used under the authority of this subsection shall be deducted from any estimate of the needs of the State of New York prepared under section 1375(b) of this title. The Administrator may not obligate or expend more than \$20,000,000 to carry out this section.

(June 30, 1948, ch. 758, title I, § 116, as added Oct. 21, 1980, Pub. L. 96-483, § 10, 94 Stat. 2363.)

CODIFICATION

Section 1375(b) of this title, referred to in subsec. (b), in the original read "section 816(b) of this Act", meaning section 818(b) of act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 815. Because the Act does not contain a section 818(b) and because of the subject matter of section 818(b), Congress probably intended to refer to section 818(b) which is classified to section 1375(b) of this title.

SUBCHAPTER II—GRANTS FOR CONSTRUCTION OF TREATMENT WORKS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1255, 1311, 1313a, 1371 of this title; title 40 App. section 214; title 42 section 5163.

§ 1281. Congressional declaration of purpose

(a) Development and implementation of waste treatment management plans and practices

It is the purpose of this subchapter to require and to assist the development and implementation of waste treatment management plans and practices which will achieve the goals of this chapter.

(b) Application of technology; confined disposal of pollutants; consideration of advanced techniques

Waste treatment management plans and practices shall provide for the application of the best practicable waste treatment technology before any discharge into receiving waters, including reclaiming and recycling of water, and confined disposal of pollutants so they will not migrate to cause water or other environmental pollution and shall provide for consideration of advanced waste treatment techniques.

(c) Waste treatment management area and scope

To the extent practicable, waste treatment management shall be on an areawide basis and provide control or treatment of all point and nonpoint sources of pollution, including in place or accumulated pollution sources.

(d) Waste treatment management construction of revenue producing facilities

The Administrator shall encourage waste treatment management which results in the construction of revenue producing facilities providing for—

(1) the recycling of potential sewage pollutants through the production of agriculture,

silviculture, or aquaculture products, or any combination thereof;

(2) the confined and contained disposal of pollutants not recycled;

(3) the reclamation of wastewater; and

(4) the ultimate disposal of sludge in a manner that will not result in environmental hazards.

(e) Waste treatment management integration of facilities

The Administrator shall encourage waste treatment management which results in integrating facilities for sewage treatment and recycling with facilities to treat, dispose of, or utilize other industrial and municipal wastes, including but not limited to solid waste and waste heat and thermal discharges. Such integrated facilities shall be designed and operated to produce revenues in excess of capital and operation and maintenance costs and such revenues shall be used by the designated regional management agency to aid in financing other environmental improvement programs.

(f) Waste treatment management "open space" and recreational considerations

The Administrator shall encourage waste treatment management which combines "open space" and recreational considerations with such management.

(g) Grants to construct publicly owned treatment works

(1) The Administrator is authorized to make grants to any State, municipality, or intermunicipal or interstate agency for the construction of publicly owned treatment works. On and after October 1, 1984, grants under this subchapter shall be made only for projects for secondary treatment or more stringent treatment, or any cost effective alternative thereto, new interceptors and appurtenances, and infiltration-in-flow correction. Notwithstanding the preceding sentence, the Administrator may make grants on and after October 1, 1984, for any project within the definition set forth in section 1292(2) of this title, other than for a project referred to in the preceding sentence, except that not more than 20 per centum (as determined by the Governor of the State) of the amount allotted to a State under section 1285 of this title for any fiscal year shall be obligated in such State under authority of this sentence.

(2) The Administrator shall not make grants from funds authorized for any fiscal year beginning after June 30, 1974, to any State, municipality, or intermunicipal or interstate agency for the erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works unless the grant applicant has satisfactorily demonstrated to the Administrator that—

(A) alternative waste management techniques have been studied and evaluated and the works proposed for grant assistance will provide for the application of the best practicable waste treatment technology over the life of the works consistent with the purposes of this subchapter; and

(B) as appropriate, the works proposed for grant assistance will take into account and

allow to the extent practicable the application of technology at a later date which will provide for the reclaiming or recycling of water or otherwise eliminate the discharge of pollutants.

(3) The Administrator shall not approve any grant after July 1, 1973, for treatment works under this section unless the applicant shows to the satisfaction of the Administrator that each sewer collection system discharging into such treatment works is not subject to excessive infiltration.

(4) The Administrator is authorized to make grants to applicants for treatment works grants under this section for such sewer system evaluation studies as may be necessary to carry out the requirements of paragraph (3) of this subsection. Such grants shall be made in accordance with rules and regulations promulgated by the Administrator. Initial rules and regulations shall be promulgated under this paragraph not later than 120 days after October 18, 1972.

(5) The Administrator shall not make grants from funds authorized for any fiscal year beginning after September 30, 1978, to any State, municipality, or intermunicipal or interstate agency for the erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works unless the grant applicant has satisfactorily demonstrated to the Administrator that innovative and alternative wastewater treatment processes and techniques which provide for the reclaiming and reuse of water, otherwise eliminate the discharge of pollutants, and utilize recycling techniques, land treatment, new or improved methods of waste treatment management for municipal and industrial waste (discharged into municipal systems) and the confined disposal of pollutants, so that pollutants will not migrate to cause water or other environmental pollution, have been fully studied and evaluated by the applicant taking into account subsection (d) of this section and taking into account and allowing to the extent practicable the more efficient use of energy and resources.

(6) The Administrator shall not make grants from funds authorized for any fiscal year beginning after September 30, 1978, to any State, municipality, or intermunicipal or interstate agency for the erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works unless the grant applicant has satisfactorily demonstrated to the Administrator that the applicant has analyzed the potential recreation and open space opportunities in the planning of the proposed treatment works.

(h) Grants to construct privately owned treatment works

A grant may be made under this section to construct a privately owned treatment works serving one or more principal residences or small commercial establishments constructed prior to, and inhabited on, December 27, 1977, where the Administrator finds that—

(1) a public body otherwise eligible for a grant under subsection (g) of this section has applied on behalf of a number of such units

and certified that public ownership of such works is not feasible;

(2) such public body has entered into an agreement with the Administrator which guarantees that such treatment works will be properly operated and maintained and will comply with all other requirements of section 1284 of this title and includes a system of charges to assure that each recipient of waste treatment services under such a grant will pay its proportionate share of the cost of operation and maintenance (including replacement); and

(3) the total cost and environmental impact of providing waste treatment services to such residences or commercial establishments will be less than the cost of providing a system of collection and central treatment of such wastes.

- (i) Waste treatment management methods, processes, and techniques to reduce energy requirements

The Administrator shall encourage waste treatment management methods, processes, and techniques which will reduce total energy requirements.

- (j) Grants for treatment works utilizing processes and techniques of guidelines under section 1314(d)(3) of this title

The Administrator is authorized to make a grant for any treatment works utilizing processes and techniques meeting the guidelines promulgated under section 1314(d)(3) of this title, if the Administrator determines it is in the public interest and if in the cost effectiveness study made of the construction grant application for the purpose of evaluating alternative treatment works, the life cycle cost of the treatment works for which the grant is to be made does not exceed the life cycle cost of the most cost effective alternative by more than 15 per centum.

- (k) Limitation on use of grants for publicly owned treatment works

No grant made after November 15, 1981, for a publicly owned treatment works, other than for facility planning and the preparation of construction plans and specifications, shall be used to treat, store, or convey the flow of any industrial user into such treatment works in excess of a flow per day equivalent to fifty thousand gallons per day of sanitary waste. This subsection shall not apply to any project proposed by a grantee which is carrying out an approved project to prepare construction plans and specifications for a facility to treat wastewater, which received its grant approval before May 15, 1980. This subsection shall not be in effect after November 15, 1981.

- (l) Grants for facility plans, or plans, specifications, and estimates for proposed project for construction of treatment works; limitations, allotments, advances, etc.

(1) After December 29, 1981, Federal grants shall not be made for the purpose of providing assistance solely for facility plans, or plans, specifications, and estimates for any proposed project for the construction of treatment works. In the event that the proposed project

receives a grant under this section for construction, the Administrator shall make an allowance in such grant for non-Federal funds expended during the facility planning and advanced engineering and design phase at the prevailing Federal share under section 1282(a) of this title, based on the percentage of total project costs which the Administrator determines is the general experience for such projects.

(2)(A) Each State shall use a portion of the funds allotted to such State each fiscal year, but not to exceed 10 per centum of such funds, to advance to potential grant applicants under this subchapter the costs of facility planning or the preparation of plans, specifications, and estimates.

(B) Such an advance shall be limited to the allowance for such costs which the Administrator establishes under paragraph (1) of this subsection, and shall be provided only to a potential grant applicant which is a small community and which in the judgment of the State would otherwise be unable to prepare a request for a grant for construction costs under this section.

(C) In the event a grant for construction costs is made under this section for a project for which an advance has been made under this paragraph, the Administrator shall reduce the amount of such grant by the allowance established under paragraph (1) of this subsection. In the event no such grant is made, the State is authorized to seek repayment of such advance on such terms and conditions as it may determine.

- (m) Grants for State of California projects

(1) Notwithstanding any other provisions of this subchapter, the Administrator is authorized to make a grant from any funds otherwise allotted to the State of California under section 1285 of this title to the project (and in the amount) specified in Order WQG 81-1 of the California State Water Resources Control Board.

(2) Notwithstanding any other provision of this chapter, the Administrator shall make a grant from any funds otherwise allotted to the State of California to the city of Eureka, California, in connection with project numbered C-98-2772, for the purchase of one hundred and thirty-nine acres of property as environmental mitigation for siting of the proposed treatment plant.

(3) Notwithstanding any other provision of this chapter, the Administrator shall make a grant from any funds otherwise allotted to the State of California to the city of San Diego, California, in connection with that city's aquaculture sewage process (total resources recovery system) as an innovative and alternative waste treatment process.

- (n) Water quality problems; funds, scope, etc.

(1) On and after October 1, 1984, upon the request of the Governor of an affected State, the Administrator is authorized to use funds available to such State under section 1285 of this title to address water quality problems due to the impacts of discharges from combined storm water and sanitary sewer overflows, which are

not otherwise eligible under this subsection, where correction of such discharges is a major priority for such State.

(2) Beginning fiscal year 1983, the Administrator shall have available \$200,000,000 per fiscal year in addition to those funds authorized in section 1287 of this title to be utilized to address water quality problems of marine bays and estuaries subject to lower levels of water quality due to the impacts of discharges from combined storm water and sanitary sewer overflows from adjacent urban complexes, not otherwise eligible under this subsection. Such sums may be used as deemed appropriate by the Administrator as provided in paragraphs (1) and (2) of this subsection, upon the request of and demonstration of water quality benefits by the Governor of an affected State.

(c) Capital financing plan

The Administrator shall encourage and assist applicants for grant assistance under this subchapter to develop and file with the Administrator a capital financing plan which, at a minimum—

(1) projects the future requirements for waste treatment services within the applicant's jurisdiction for a period of no less than ten years;

(2) projects the nature, extent, timing, and costs of future expansion and reconstruction of treatment works which will be necessary to satisfy the applicant's projected future requirements for waste treatment services; and

(3) sets forth with specificity the manner in which the applicant intends to finance such future expansion and reconstruction.

(June 30, 1948, ch. 758, title II, § 201, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 833, and amended Dec. 27, 1977, Pub. L. 95-217, §§ 12-16, 91 Stat. 1569, 1579; Oct. 21, 1980, Pub. L. 96-483, §§ 2(d), 3, 94 Stat. 2381; Dec. 29, 1981, Pub. L. 97-117, §§ 2(a), 3(a), 4-8, 10(c), 95 Stat. 1623-1626.)

AMENDMENTS

1981—Subsec. (g)(1). Pub. L. 97-117, § 2(a), inserted provisions restricting, on or after Oct. 1, 1984, the categories of projects eligible for grants under this subchapter and providing an exception to the restriction for projects, other than specified projects, within the definition set forth in section 1292(2) of this title, but limiting such exception to not more than 20 per centum, as determined by the Governor of the State, of the amount allotted to a State under section 1285 of this title for any fiscal year.

Subsec. (k). Pub. L. 97-117, § 10(c), inserted provision that subsection not be in effect after Nov. 18, 1981.

Subsec. (d). Pub. L. 97-117, § 3(a), added subsec. (f).

Subsec. (m). Pub. L. 97-117, § 4, added subsec. (m).

Subsec. (n). Pub. L. 97-117, § 6, added subsec. (n).

Subsec. (o). Pub. L. 97-117, § 6, added subsec. (o).

1980—Subsec. (h). Pub. L. 96-483, § 2(d), struck out material following par. (3), relating to payment to the United States by commercial users of that portion of the cost of construction applicable to treatment of commercial wastes to the extent attributable to the Federal share of the cost of construction.

Subsec. (k). Pub. L. 96-483, § 3, added subsec. (k).

1977—Subsec. (g)(3). Pub. L. 95-217, § 12, added par. (5).

Subsec. (g)(6). Pub. L. 95-217, § 12, added par. (6).

Subsec. (h). Pub. L. 95-217, § 14, added subsec. (h).

Subsec. (l). Pub. L. 95-217, § 15, added subsec. (l).

Subsec. (j). Pub. L. 95-217, § 18, added subsec. (j).

EFFECTIVE DATE OF 1980 AMENDMENT

Section 2(g) of Pub. L. 95-483 provided that: "The amendments made by this section (amending sections 1281, 1284, and 1293 of this title, enacting provisions set out as notes under section 1284 of this title, and amending provisions set out as a note under section 1284 of this title) shall take effect on December 27, 1977."

ENVIRONMENTAL FINANCING AUTHORITY

Section 12 of Pub. L. 92-500, as amended by Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, provided that:

"(a) [Short Title] This section may be cited as the Environmental Financing Act of 1972.

"(b) [Establishment] There is hereby created a body corporate to be known as the Environmental Financing Authority, which shall have succession until dissolved by Act of Congress. The Authority shall be subject to the general supervision and direction of the Secretary of the Treasury. The Authority shall be an instrumentality of the United States Government and shall maintain such offices as may be necessary or appropriate in the conduct of its business.

"(c) [Congressional Declaration of Purpose] The purpose of this section is to assure that inability to borrow necessary funds on reasonable terms does not prevent any State or local public body from carrying out any project for construction of waste treatment works determined eligible for assistance pursuant to subsection (e) of this section.

"(d) [Board of Directors] (1) The Authority shall have a Board of Directors consisting of five persons, one of whom shall be the Secretary of the Treasury or his designee as Chairman of the Board, and four of whom shall be appointed by the President from among the officers or employees of the Authority or of any department or agency of the United States Government.

"(2) The Board of Directors shall meet at the call of its Chairman. The Board shall determine the general policies which shall govern the operations of the Authority. The Chairman of the Board shall select and effect the appointment of qualified persons to fill the offices as may be provided for in the bylaws, with such executive functions, powers, and duties as may be prescribed by the bylaws or by the Board of Directors, and such persons shall be the executive officers of the Authority and shall discharge all such executive functions, powers, and duties. The members of the Board, as such, shall not receive compensation for their services.

"(e) [Purchase of State and Local Obligations] (1) Until July 1, 1975, the Authority is authorized to make commitments to purchase, and to purchase on terms and conditions determined by the Authority, any obligation or participation therein which is issued by a State or local public body to finance the non-Federal share of the cost of any project for the construction of waste treatment works which the Administrator of the Environmental Protection Agency has determined to be eligible for Federal financial assistance under the Federal Water Pollution Control Act [this chapter].

"(2) No commitment shall be entered into, and no purchase shall be made, unless the Administrator of the Environmental Protection Agency (A) has certified that the public body is unable to obtain on reasonable terms sufficient credit to finance its actual needs; (B) has approved the project as eligible under the Federal Water Pollution Control Act [this chapter], and (C) has agreed to guarantee timely payment of principal and interest on the obligation. The Administrator is authorized to guarantee such timely payments and to issue regulations as he deems necessary and proper to protect such guarantees. Appropriations are hereby authorized to be made to the Admin-

istrator in such sums as are necessary to make payments under such guarantees, and such payments are authorized to be made from such appropriations.

"(3) No purchase shall be made of obligations issued to finance projects, the permanent financing of which occurred prior to the enactment of this section [Oct. 18, 1972].

"(4) Any purchase by the Authority shall be upon such terms and conditions as to yield a return at a rate determined by the Secretary of the Treasury taking into consideration (A) the current average yield on outstanding marketable obligations of the United States of comparable maturity or in its stead whenever the Authority has sufficient of its own long-term obligations outstanding, the current average yield on outstanding obligations of the Authority of comparable maturity; and (B) the market yields on municipal bonds.

"(5) The Authority is authorized to charge fees for its commitments and other services adequate to cover all expenses and to provide for the accumulation of reasonable contingency reserves and such fees shall be included in the aggregate project costs.

"(f) [Initial Capital] To provide initial capital to the Authority the Secretary of the Treasury is authorized to advance the funds necessary for this purpose. Each such advance shall be upon such terms and conditions as to yield a return at a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturities. Interest payments on such advances may be deferred, at the discretion of the Secretary, but any such deferred payments shall themselves bear interest at the rate specified in this section. There is authorized to be appropriated not to exceed \$100,000,000, which shall be available for the purposes of this subsection.

"(g) [Issuance of Obligations] (1) The Authority is authorized, with the approval of the Secretary of the Treasury, to issue and have outstanding obligations having such maturities and bearing such rate or rates of interest as may be determined by the Authority. Such obligations may be redeemable at the option of the Authority before maturity in such manner as may be stipulated therein.

"(2) As authorized in appropriation Acts, and such authorizations may be without fiscal year limitations, the Secretary of the Treasury may in his discretion purchase or agree to purchase any obligations issued pursuant to paragraph (1) of this subsection, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities hereafter issued under chapter 31 of title 31, as now or hereafter in force, and the purposes for which securities may be issued under chapter 31 of title 31, as now or hereafter in force, are extended to include such purchases. Each purchase of obligations by the Secretary of the Treasury under this subsection shall be upon such terms and conditions as to yield a return at a rate not less than a rate determined by the Secretary of the Treasury, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturities. The Secretary of the Treasury may sell, upon such terms and conditions and at such price or prices as he shall determine, any of the obligations acquired by him under this paragraph. All purchases and sales by the Secretary of the Treasury of such obligations under this paragraph shall be treated as public debt transactions of the United States. (As amended Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067.)

"(h) [Interest Differential] The Secretary of the Treasury is authorized and directed to make annual payments to the Authority in such amounts as are necessary to equal the amount by which the dollar amount of interest expense accrued by the Authority on account of its obligations exceeds the dollar amount of interest income accrued by the Authority

on account of obligations purchased by it pursuant to subsection (e) of this section.

"(i) [Powers] The Authority shall have power—

"(1) to sue and be sued, complain and defend, in its corporate name;

"(2) to adopt, alter, and use a corporate seal, which shall be judicially noticed;

"(3) to adopt, amend, and repeal bylaws, rules, and regulations as may be necessary for the conduct of its business;

"(4) to conduct its business, carry on its operations, and have offices and exercise the powers granted by this section in any State without regard to any qualification or similar statute in any State;

"(5) to lease, purchase, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with any property, real, personal, or mixed, or any interest therein, wherever situated;

"(6) to accept gifts or donations of services, or of property, real, personal, or mixed, tangible or intangible, in aid of any of the purposes of the Authority;

"(7) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of its property and assets;

"(8) to appoint such officers, attorneys, employees, and agents as may be required, to define their duties, to fix and to pay such compensation for their services as may be determined, subject to the civil service and classification laws, to require bonds for them and pay the premium thereof; and

"(9) to enter into contracts, to execute instruments, to incur liabilities, and to do all things as are necessary or incidental to the proper management of its affairs and the proper conduct of its business.

"(j) [Tax Exemption, Exemptions] The Authority, its property, its franchise, capital, reserves, surplus, security holdings, and other funds, and its income shall be exempt from all taxation now or hereafter imposed by the United States or by any State or local taxing authority; except that (A) any real property and any tangible personal property of the Authority shall be subject to Federal, State, and local taxation to the same extent according to its value as other such property is taxed, and (B) any and all obligations issued by the Authority shall be subject both as to principal and interest to Federal, State, and local taxation to the same extent as the obligations of private corporations are taxed.

"(k) [Nature of Obligations] All obligations issued by the Authority shall be lawful investments, and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under authority or control of the United States or of any officer or officers thereof. All obligations issued by the Authority pursuant to this section shall be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission, to the same extent as securities which are issued by the United States.

"(l) [Preparation of Obligations by Secretary of the Treasury] In order to furnish obligations for delivery by the Authority, the Secretary of the Treasury is authorized to prepare such obligations in such form as the Authority may approve, such obligations when prepared to be held in the Treasury subject to delivery upon order by the Authority. The engraved plates, dies, bed pieces, and so forth, executed in connection therewith, shall remain in the custody of the Secretary of the Treasury. The Authority shall reimburse the Secretary of the Treasury for any expenditures made in the preparation, custody, and delivery of such obligations.

"(m) [Annual Report to Congress] The Authority shall, as soon as practicable after the end of each fiscal year, transmit to the President and the Congress an annual report of its operations and activities.

"(n) [Subsec. (n) amended section 34 of Title 12, Banks and Banking, and is not set out herein.]

"(o) [Financial Controls] The budget and audit provisions of chapter 91 of title 31 shall be applicable to the Environmental Financing Authority in the same manner as they are applied to the wholly owned Government corporations. (As amended Pub. L. 97-258, § 4(b), Sept. 12, 1982, 96 Stat. 1067.)

"(p) (Subsec. (p) amended section 711 of former Title 31, Money and Finance, and is not set out herein.)"

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1254, 1281a, 1282, 1283, 1284, 1285, 1286, 1288, 1291, 1292, 1297, 1298, 1311, 1314, 1371, 1375 of this title.

§ 1281a. Total treatment system funding

Notwithstanding any other provision of law, in any case where the Administrator of the Environmental Protection Agency finds that the total of all grants made under section 1281 of this title for the same treatment works exceeds the actual construction costs for such treatment works (as defined in this chapter) such excess amount shall be a grant of the Federal share (as defined in this chapter) of the cost of construction of a sewage collection system if—

(1) such sewage collection system was constructed as part of the same total treatment system as the treatment works for which such grants under section 1281 of this title were approved, and

(2) an application for assistance for the construction of such sewage collection system was filed in accordance with section 3102 of title 42 before all such grants under section 1281 of this title were made and such grant under section 3102 of title 42 could not be approved due to lack of funding under such section 3102 of title 42.

The total of all grants for sewage collection systems made under this section shall not exceed \$2,800,000.

(Pub. L. 95-217, § 78, Dec. 27, 1977, 91 Stat. 1611.)

CODIFICATION

Section was enacted as part of the Clean Water Act of 1977, Pub. L. 95-217, and not as part of the Federal Water Pollution Control Act, June 30, 1948, ch. 788, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 816, which completes this chapter.

§ 1282. Federal share

(a) Amount of grants for treatment works

(1) The amount of any grant for treatment works made under this chapter from funds authorized for any fiscal year beginning after June 30, 1971, and ending before October 1, 1984, shall be 75 per centum of the cost of construction thereof (as approved by the Administrator), and for any fiscal year beginning on or after October 1, 1984, shall be 85 per centum of the cost of construction thereof (as approved by the Administrator), unless modified to a lower percentage rate uniform throughout a State by the Governor of that State with the concurrence of the Administrator. Within ninety days after October 21, 1980, the Administrator shall issue guidelines for concurrence in any such modification, which shall provide for the consideration of the unobligated bal-

ance of sums allocated to the State under section 1285 of this title, the need for assistance under this subchapter in such State, and the availability of State grant assistance to replace the Federal share reduced by such modification. The payment of any such reduced Federal share shall not constitute an obligation on the part of the United States or a claim on the part of any State or grantee to reimbursement for the portion of the Federal share reduced in any such State. Any grant (other than for reimbursement) made prior to October 18, 1972, from any funds authorized for any fiscal year beginning after June 30, 1971, shall, upon the request of the applicant, be increased to the applicable percentage under this section. Notwithstanding the first sentence of this paragraph, in any case where a primary, secondary, or advanced waste treatment facility or its related interceptors or a project for infiltration-in-flow correction has received a grant for erection, building, acquisition, alteration, remodeling, improvement, extension, or correction before October 1, 1984, all segments and phases of such facility, interceptors, and project for infiltration-in-flow correction shall be eligible for grants at 75 per centum of the cost of construction thereof.

(2) The amount of any grant made after September 30, 1978, and before October 1, 1981, for any eligible treatment works or significant portion thereof utilizing innovative or alternative wastewater treatment processes and techniques referred to in section 1281(g)(5) of this title shall be 85 per centum of the cost of construction thereof, unless modified by the Governor of the State with the concurrence of the Administrator to a percentage rate no less than 15 per centum greater than the modified uniform percentage rate in which the Administrator has concurred pursuant to paragraph (1) of this subsection. The amount of any grant made after September 30, 1981, for any eligible treatment works or unit processes and techniques thereof utilizing innovative or alternative wastewater treatment processes and techniques referred to in section 1281(g)(5) of this title shall be a percentage of the cost of construction thereof equal to 20 per centum greater than the percentage in effect under paragraph (1) of this subsection for such works or unit processes and techniques, but in no event greater than 85 per centum of the cost of construction thereof. No grant shall be made under this paragraph for construction of a treatment works in any State unless the proportion of the State contribution to the non-Federal share of construction costs for all treatment works in such State receiving a grant under this paragraph is the same as or greater than the proportion of the State contribution (if any) to the non-Federal share of construction costs for all treatment works receiving grants in such State under paragraph (1) of this subsection.

(3) In addition to any grant made pursuant to paragraph (2) of this subsection, the Administrator is authorized to make a grant to fund all of the costs of the modification or replacement of any facilities constructed with a grant made pursuant to paragraph (2) if the Administrator

finds that such facilities have not met design performance specifications unless such failure is attributable to negligence on the part of any person and if such failure has significantly increased capital or operating and maintenance expenditures.

(4) For the purposes of this section, the term "eligible treatment works" means those treatment works in each State which meet the requirements of section 1281(g)(5) of this title and which can be fully funded from funds available for such purpose in such State.

(b) Amount of grants for construction of treatment works not commenced prior to July 1, 1971

The amount of the grant for any project approved by the Administrator after January 1, 1971, and before July 1, 1971, for the construction of treatment works, the actual erection, building or acquisition of which was not commenced prior to July 1, 1971, shall, upon the request of the applicant, be increased to the applicable percentage under subsection (a) of this section for grants for treatment works from funds for fiscal years beginning after June 30, 1971, with respect to the cost of such actual erection, building, or acquisition. Such increased amount shall be paid from any funds allocated to the State in which the treatment works is located without regard to the fiscal year for which such funds were authorized. Such increased amount shall be paid for such project only if—

(1) a sewage collection system that is a part of the same total waste treatment system as the treatment works for which such grant was approved is under construction or is to be constructed for use in conjunction with such treatment works, and if the cost of such sewage collection system exceeds the cost of such treatment works, and

(2) the State water pollution control agency or other appropriate State authority certifies that the quantity of available ground water will be insufficient, inadequate, or unsuitable for public use, including the ecological preservation and recreational use of surface water bodies, unless effluents from publicly-owned treatment works after adequate treatment are returned to the ground water consistent with acceptable technological standards.

(c) Availability of sums allotted to Puerto Rico

Notwithstanding any other provision of law, sums allotted to the Commonwealth of Puerto Rico under section 1285 of this title for fiscal year 1981 shall remain available for obligation for the fiscal year for which authorized and for the period of the next succeeding twenty-four months. Such sums and any unobligated funds available to Puerto Rico from allotments for fiscal years ending prior to October 1, 1981, shall be available for obligation by the Administrator of the Environmental Protection Agency only to fund the following systems: Aguadilla, Arecibo, Mayaguez, Carolina, and Camuy Hatillo. These funds may be used by the Commonwealth of Puerto Rico to fund the non-Federal share of the costs of such projects. To the extent that these funds are used to pay the non-Federal share, the Commonwealth of Puerto Rico shall repay to the Environmental

Protection Agency such amounts on terms and conditions developed and approved by the Administrator in consultation with the Governor of the Commonwealth of Puerto Rico. Agreement on such terms and conditions, including the payment of interest to be determined by the Secretary of the Treasury, shall be reached prior to the use of these funds for the Commonwealth's non-Federal share. No Federal funds awarded under this provision shall be used to replace local governments funds previously expended on these projects.

(June 30, 1948, ch. 758, title II, § 202, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 834, and amended Dec. 27, 1977, Pub. L. 95-217, § 17, 91 Stat. 1571; Oct. 21, 1980, Pub. L. 96-483, § 9, 94 Stat. 2362; Dec. 29, 1981, Pub. L. 97-117, § 7, 8(a), (b), 95 Stat. 1625; Oct. 19, 1982, Pub. L. 97-357, title V, § 501, 96 Stat. 1712.)

Amendments

1982—Subsec. (c), Pub. L. 97-357 added subsec. (c).

1981—Subsec. (a)(1), Pub. L. 97-117, § 7, inserted "and ending before October 30, 1984," following "June 30, 1971," and also inserted "and for any fiscal year beginning on or after October 1, 1984, shall be 55 per centum of the cost of construction thereof (as approved by the Administrator)," following "(as approved by the Administrator)," and provision that notwithstanding the first sentence of this paragraph, in any case where primary, secondary, or advanced waste treatment facility or its related interceptors or a project for infiltration-in-flow correction has received a grant for building, acquisition, etc., before Oct. 1, 1984, all segments and phases be eligible for grants at 75 per centum of the cost of construction.

Subsec. (a)(2), Pub. L. 97-117, § 8(a), inserted provision that the amount of any grant made after Sept. 30, 1981, for any eligible treatment works or unit processes or techniques, utilizing innovative or alternative wastewater treatment processes or techniques referred to in section 1281(g)(5) of this title be a percentage of the cost of construction equal to 20 per centum greater than the percentage in effect under par. (1) of this subsection, but in no event greater than 65 per centum of the cost of construction.

Subsec. (a)(4), Pub. L. 97-117, § 8(b), struck out "in the fiscal years ending September 30, 1979, September 30, 1980, and September 30, 1981" following "purpose in such State" and provision that excluded from the term "eligible treatment works" collector sewers, interceptors, storm or sanitary sewers or the separation thereof, or major sewer rehabilitation.

1980—Subsec. (a)(1), Pub. L. 96-483, § 9(a), added provisions relating to modification to a lower percentage rate by the Governor of the State and issuance of guidelines by the Administrator for the concurrence in any such modification.

Subsec. (a)(2), Pub. L. 96-483, § 9(b), added provision relating to the modification by the Governor of the State to a percentage rate no less than 15 per centum greater than the modified uniform rate in which the Administrator has concurred.

1977—Subsec. (a), Pub. L. 95-217 designated existing provisions as par. (1) and added para. (2), (3), and (4).

PROMULGATION OF FEDERAL SHARES

Act July 9, 1956, ch. 516, § 4, 70 Stat. 507, authorized the Surgeon General to promulgate Federal shares under the Federal Water Pollution Control Grant Program as soon as possible after July 9, 1956, in the manner specified in the Water Pollution Control Act, act June 30, 1948, ch. 758, 62 Stat. 1185, and provided that such shares were to be conclusive for the purposes of section 8 of act June 30, 1948.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1285, 1281, 1285 of this title.

§ 1283. Plans, specifications, estimates, and payments**(a) Submission; contractual nature of approval by Administrator**

Each applicant for a grant shall submit to the Administrator for his approval, plans, specifications, and estimates for each proposed project for the construction of treatment works for which a grant is applied for under section 1281(g)(1) of this title from funds allotted to the State under section 1285 of this title and which otherwise meets the requirements of this chapter. The Administrator shall act upon such plans, specifications, and estimates as soon as practicable after the same have been submitted, and his approval of any such plans, specifications, and estimates shall be deemed a contractual obligation of the United States for the payment of its proportional contribution to such project. In the case of a treatment works that has an estimated total cost of \$8,000,000 or less (as determined by the Administrator), and the population of the applicant municipality is twenty-five thousand or less (according to the most recent United States census), upon completion of an approved facility plan, a single grant may be awarded for the combined Federal share of the cost of preparing construction plans and specifications, and the building and erection of the treatment works.

(b) Periodic payments

The Administrator shall, from time to time as the work progresses, make payments to the recipient of a grant for costs of construction incurred on a project. These payments shall at no time exceed the Federal share of the cost of construction incurred to the date of the voucher covering such payment plus the Federal share of the value of the materials which have been stockpiled in the vicinity of such construction in conformity to plans and specifications for the project.

(c) Final payments

After completion of a project and approval of the final voucher by the Administrator, he shall pay out of the appropriate sums the unpaid balance of the Federal share payable on account of such project.

(d) Projects eligible

Nothing in this chapter shall be construed to require, or to authorize the Administrator to require, that grants under this chapter for construction of treatment works be made only for projects which are operable units usable for sewage collection, transportation, storage, waste treatment, or for similar purposes without additional construction.

(e) Technical and legal assistance in administration and enforcement of contracts; intervention in civil actions

At the request of a grantee under this subchapter, the Administrator is authorized to provide technical and legal assistance in the administration and enforcement of any contract in connection with treatment works assisted

under this subchapter, and to intervene in any civil action involving the enforcement of such a contract.

(June 30, 1948, ch. 758, title II, § 203, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 835, and amended Jan. 2, 1974, Pub. L. 93-243, § 2, 87 Stat. 1069; Dec. 27, 1977, Pub. L. 95-217, §§ 18, 19, 91 Stat. 1571, 1572; Oct. 21, 1980, Pub. L. 96-483, § 6, 94 Stat. 2362; Dec. 29, 1981, Pub. L. 97-117, § 9, 95 Stat. 1626.)

AMENDMENTS

1981—Subsec. (a). Pub. L. 97-117 substituted “\$8,000,000” for “\$4,000,000” and struck out provision that, if any State is found by the Administrator to have unusually high costs of construction, the Administrator may authorize a single grant where the estimated total cost of the treatment works does not exceed \$8,000,000.

1980—Subsec. (a). Pub. L. 96-483 substituted “\$4,000,000” and “\$5,000,000” for “\$2,000,000” and “\$3,000,000”, respectively.

1977—Subsec. (a). Pub. L. 95-217, § 18, provided that, in the case of a treatment works that has an estimated total cost of \$2,000,000 or less (as determined by the Administrator), and the population of the applicant municipality is twenty-five thousand or less (according to the most recent United States census), upon completion of an approved facility plan, a single grant may be awarded for the combined Federal share of the cost of preparing construction plans and specifications, and the building and erection of the treatment works, and that, if any State is found by the Administrator to have unusually high costs of construction, the Administrator may authorize a single grant where the estimated total cost of the treatment works does not exceed \$3,000,000.

Subsec. (e). Pub. L. 95-217, § 19, added subsec. (e).

1974—Subsec. (d). Pub. L. 93-243 added subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1284, 1286, 1311 of this title.

§ 1284. Limitations and conditions**(a) Determinations by Administrator**

Before approving grants for any project for any treatment works under section 1281(g)(1) of this title the Administrator shall determine—

(1) that such works are included in any applicable areawide waste treatment management plan developed under section 1288 of this title;

(2) that such works are in conformity with any applicable State plan under section 1313(e) of this title;

(3) that such works have been certified by the appropriate State water pollution control agency as entitled to priority over such other works in the State in accordance with any applicable State plan under section 1313(e) of this title, except that any priority list developed pursuant to section 1313(e)(3)(H) of this title may be modified by such State in accordance with regulations promulgated by the Administrator to give higher priority for grants for the Federal share of the cost of preparing construction drawings and specifications for any treatment works utilizing processes and techniques meeting the guidelines promulgated under section 1314(d)(3) of this title and

for grants for the combined Federal share of the cost of preparing construction drawings and specifications and the building and erection of any treatment works meeting the requirements of the next to the last sentence of section 1283(a) of this title which utilizes processes and techniques meeting the guidelines promulgated under section 1314(d)(3) of this title.¹

(4) that the applicant proposing to construct such works agrees to pay the non-Federal costs of such works and has made adequate provisions satisfactory to the Administrator for assuring proper and efficient operation, including the employment of trained management and operations personnel, and the maintenance of such works in accordance with a plan of operation approved by the State water pollution control agency or, as appropriate, the interstate agency, after construction thereof;

(5) that the size and capacity of such works relate directly to the needs to be served by such works, including sufficient reserve capacity. The amount of reserve capacity provided shall be approved by the Administrator on the basis of a comparison of the cost of constructing such reserves as a part of the works to be funded and the anticipated cost of providing expanded capacity at a date when such capacity will be required, after taking into account, in accordance with regulations promulgated by the Administrator, efforts to reduce total flow of sewage and unnecessary water consumption. The amount of reserve capacity eligible for a grant under this subchapter shall be determined by the Administrator taking into account the projected population and associated commercial and industrial establishments within the jurisdiction of the applicant to be served by such treatment works as identified in an approved facilities plan, an areawide plan under section 1288 of this title, or an applicable municipal master plan of development. For the purpose of this paragraph, section 1288 of this title, and any such plan, projected population shall be determined on the basis of the latest information available from the United States Department of Commerce or from the States as the Administrator, by regulation, determines appropriate. Beginning October 1, 1984, no grant shall be made under this subchapter to construct that portion of any treatment works providing reserve capacity in excess of existing needs (including existing needs of residential, commercial, industrial, and other users) on the date of approval of a grant for the erection, building, acquisition, alteration, remodeling, improvement, or extension of a project for secondary treatment or more stringent treatment or new interceptors and appurtenances, except that in no event shall reserve capacity of a facility and its related interceptors to which this subsection applies be in excess of existing needs on October 1, 1990. In any case in which an applicant proposes to provide reserve capacity greater than that eligible for Federal finan-

cial assistance under this subchapter, the incremental costs of the additional reserve capacity shall be paid by the applicant;

(6) that no specification for bids in connection with such works shall be written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing or to provide for necessary interchangeability of parts and equipment. When in the judgment of the grantee, it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement, and in doing so the grantee need not establish the existence of any source other than the brand or source so named.

(b) Additional determinations; issuance of guidelines; approval by Administrator; system of charges

(1) Notwithstanding any other provision of this subchapter, the Administrator shall not approve any grant for any treatment works under section 1281(g)(1) of this title after March 1, 1973, unless he shall first have determined that the applicant (A) has adopted or will adopt a system of charges to assure that each recipient of waste treatment services within the applicant's jurisdiction, as determined by the Administrator, will pay its proportionate share (except as otherwise provided in this paragraph) of the costs of operation and maintenance (including replacement) of any waste treatment services provided by the applicant; and (B) has legal, institutional, managerial, and financial capability to insure adequate construction, operation, and maintenance of treatment works throughout the applicant's jurisdiction, as determined by the Administrator. In any case where an applicant which, as of December 27, 1977, uses a system of dedicated ad valorem taxes and the Administrator determines that the applicant has a system of charges which results in the distribution of operation and maintenance costs for treatment works within the applicant's jurisdiction, to each user class, in proportion to the contribution to the total cost of operation and maintenance of such works by each user class (taking into account total waste water loading of such works, the constituent elements of the wastes, and other appropriate factors), and such applicant is otherwise in compliance with clause (A) of this paragraph with respect to each industrial user, then such dedicated ad valorem tax system shall be deemed to be the user charge system meeting the requirements of clause (A) of this paragraph for the residential user class and such small non-residential user classes as defined by the Administrator. In defining small non-residential users, the Administrator shall consider the volume of wastes discharged into the treatment works by such users and the constituent elements of such wastes as well as such other factors as he deems appropriate.

¹ Do in original. The period should be a semicolon.

(2) The Administrator shall, within one hundred and eighty days after October 18, 1972, and after consultation with appropriate State, interstate, municipal, and intermunicipal agencies, issue guidelines applicable to payment of waste treatment costs by industrial and nonindustrial recipients of waste treatment services which shall establish (A) classes of users of such services, including categories of industrial users; (B) criteria against which to determine the adequacy of charges imposed on classes and categories of users reflecting all factors that influence the cost of waste treatment, including strength, volume, and delivery flow rate characteristics of waste; and (C) model systems and rates of user charges typical of various treatment works serving municipal-industrial communities.

(3) Approval by the Administrator of a grant to an interstate agency established by interstate compact for any treatment works shall satisfy any other requirement that such works be authorized by Act of Congress.

(4) A system of charges which meets the requirement of clause (A) of paragraph (1) of this subsection may be based on something other than metering the sewage or water supply flow of residential recipients of waste treatment services, including ad valorem taxes. If the system of charges is based on something other than metering the Administrator shall require (A) the applicant to establish a system by which the necessary funds will be available for the proper operation and maintenance of the treatment works; and (B) the applicant to establish a procedure under which the residential user will be notified as to that portion of his total payment which will be allocated to the cost of the waste treatment services.

(c) Applicability of reserve capacity restrictions to primary, secondary, or advanced waste treatment facilities or related interceptors

The next to the last sentence of paragraph (5) of subsection (a) of this section shall not apply in any case where a primary, secondary, or advanced waste treatment facility or its related interceptors has received a grant for erection, building, acquisition, alteration, remodeling, improvement, or extension before October 1, 1984, and all segments and phases of such facility and interceptors shall be funded based on a 20-year reserve capacity in the case of such facility and a 20-year reserve capacity in the case of such interceptors, except that, if a grant for such interceptors has been approved prior to December 29, 1981, such interceptors shall be funded based on the approved reserve capacity not to exceed 40 years.

(d) Engineering requirements; certification by owner and operator; contractual assurances, etc.

(1) A grant for the construction of treatment works under this subchapter shall provide that the engineer or engineering firm supervising construction or providing architect engineering services during construction shall continue its relationship to the grant applicant for a period of one year after the completion of construction and initial operation of such treatment works. During such period such engineer or engineering firm shall supervise operation of the

treatment works, train operating personnel, and prepare curricula and training material for operating personnel. Costs associated with the implementation of this paragraph shall be eligible for Federal assistance in accordance with this subchapter.

(2) On the date one year after the completion of construction and initial operation of such treatment works, the owner and operator of such treatment works shall certify to the Administrator whether or not such treatment works meet the design specifications and effluent limitations contained in the grant agreement and permit pursuant to section 1342 of this title for such works. If the owner and operator of such treatment works cannot certify that such treatment works meet such design specifications and effluent limitations, any failure to meet such design specifications and effluent limitations shall be corrected in a timely manner, to allow such affirmative certification, at other than Federal expense.

(3) Nothing in this section shall be construed to prohibit a grantee under this subchapter from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party to a contract pertaining to a project assisted under this subchapter, than those provided under this subsection.

(June 30, 1948, ch. 758, title II, § 204, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 835, and amended Dec. 27, 1977, Pub. L. 95-217, §§ 20-24, 91 Stat. 1572, 1873; Oct. 21, 1980, Pub. L. 96-483, § 2(a), (b), 94 Stat. 2380, 2381; Dec. 29, 1981, Pub. L. 97-117, §§ 10(a), (b), 11, 12, 95 Stat. 1626, 1627.)

AMENDMENTS

1981.—Subsec. (a)(5), Pub. L. 97-117, § 10(a), inserted provision that beginning Oct. 1, 1984, no grant be made under this subchapter to construct that portion of any treatment works providing reserve capacity in excess of existing needs on the date of approval of a grant for the erection, building, etc., of a project for secondary treatment or more stringent treatment or new interceptors and appurtenances, except that in no event shall reserve capacity of a facility and its related interceptors to which this subsection applies be in excess of existing needs on Oct. 1, 1990, and that in any case in which an applicant proposes to provide reserve capacity greater than that eligible for Federal financial assistance under this subchapter, the incremental costs of the additional reserve capacity be paid by the applicant.

Subsec. (a)(8), Pub. L. 97-117, § 11, struck out, or at least two brand names or trade names of comparable quality or utility are listed and are followed by the words "or equal" following "parts and equipment" and inserted provision that when in the judgment of the grantee, it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description be used as a means to define performance or other salient requirements of a procurement, and in doing so the grantee need not establish the existence of any source other than the brand or source so named.

Subsec. (c), Pub. L. 97-117, § 10(b), added subsec. (c).

Subsec. (d), Pub. L. 97-117, § 12, added subsec. (d).

1980.—Subsec. (b)(1), Pub. L. 96-483, § 2(a), redesignated cl. (C) as (B). Former cl. (B) relating to payment, as a condition of approval of a grant, to an applicant by industrial users of that portion of cost of construction allocable to the treatment of such indus-

trial waste to the extent attributable to the Federal share of the cost of construction, was struck out.

Subsec. (b)(3) to (8), Pub. L. 94-483, § 2(b), redesignated para. (4) and (5) as (3) and (4), respectively. Former par. (3) relating to a formula determining the amount the grantee shall retain of the revenues derived from the payment of costs by industrial users of waste treatment services, to the extent costs are attributable to the Federal share of eligible project costs, and former par. (8) relating to the exemption from the requirements of par. (1)(B) of industrial users with a flow of twenty-five thousand gallons or less per day, were struck out.

1977—Subsec. (a)(3), Pub. L. 95-217, § 20, provided that any priority list developed pursuant to section 1313(e)(3)(H) of this title may be modified by such State in accordance with regulations promulgated by the Administrator to give higher priority for grants for the Federal share of the cost of preparing construction drawings and specifications for any treatment works utilizing processes and techniques meeting the guidelines promulgated under section 1314(d)(3) of this title and for grants for the combined Federal share of the cost of preparing construction drawings and specifications and the building and erection of any treatment works meeting the requirements of the next to the last sentence of section 1283(a) of this title which utilizes processes and techniques meeting the guidelines promulgated under section 1314(d)(3) of this title.

Subsec. (a)(5), Pub. L. 95-217, § 21, provided that efforts to reduce total flow of sewage and unnecessary water consumption be taken into account, in accordance with regulations promulgated by the Administrator, that the amount of reserve capacity eligible for a grant under this subchapter be determined by the Administrator taking into account the projected population and associated commercial and industrial establishments within the jurisdiction of the applicant to be served by such treatment works as identified in an approved facilities plan, an areawide plan under section 1288 of this title, or an applicable municipal master plan of development, and that, for the purpose of this paragraph, section 1288 of this title, and any such plan, projected population be determined on the basis of the latest information available from the United States Department of Commerce or from the States as the Administrator, by regulation, determines appropriate.

Subsec. (b)(1), Pub. L. 95-217, § 22(a)(1), (3), 24(c), added "except as otherwise provided in this paragraph" following "proportionate share" in cl. (A) and "(which such portion, in the discretion of the applicant, may be recovered from industrial users of the total waste treatment system as distinguished from the treatment works for which the grant is made)" in cl. (B) and, at the end of existing provisions, added sentences under which a dedicated ad valorem tax system is to be deemed the user charge system meeting the requirements of cl. (A) for the residential user class and such small non-residential user classes as defined by the Administrator in cases where an applicant, as of Dec. 27, 1977, uses a system of dedicated ad valorem taxes and the Administrator determines that the applicant has a system of charges which results in the distribution of operation and maintenance costs for treatment works within the applicant's jurisdiction, to each user class, in proportion to the contribution to the total cost of operation and maintenance of such works by each user class (taking into account total waste water loading of such works, the constituent elements of the wastes, and other appropriate factors), and such applicant is otherwise in compliance with clause (A) of this paragraph with respect to each industrial user.

Subsec. (b)(3), Pub. L. 95-217, § 23, 24(a), substituted "necessary for the administrative costs associated with the requirement of paragraph (1)(B) of this subsection and future expansion" for "necessary for future expansion" in cl. (B) and, at the end of existing

provisions, added sentence under which, subject to the approval of the Administrator, the following: "Not a grantee that received a grant prior to Dec. 27, 1977, may reduce the amounts required to be paid to such grantee by any industrial user of waste treatment services under such paragraph, if such grantee requires such industrial user to adopt other means of reducing the demand for waste treatment services through reduction in the total flow of sewage or unnecessary water consumption, in proportion to such reduction as determined in accordance with regulations promulgated by the Administrator.

Subsec. (b)(5), Pub. L. 95-217, § 22(b), added par. (5).
Subsec. (b)(6), Pub. L. 95-217, § 24(b), added par. (6).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-483 effective Dec. 27, 1977, see section 2(g) of Pub. L. 96-483, set out as a note under section 1281 of this title.

ELIMINATION OF INAPPLICABLE CONDITIONS OR REQUIREMENTS FROM CERTAIN GRANTS

Section 2(c) of Pub. L. 96-483 provided that: "The Administrator of the Environmental Protection Agency shall take such action as may be necessary to remove from any grant made under section 201(g)(1) of the Federal Water Pollution Control Act (section 1281(g)(1) of this title) after March 1, 1973, and prior to the date of enactment of this Act (Oct. 21, 1980), any condition or requirement no longer applicable as a result of the repeals made by subsections (a) and (b) of this section [amending subsec. (b) of this section] or release any grant recipient of the obligations established by such conditions or other requirement."

Section 2(c) of Pub. L. 96-483, set out above, effective Dec. 27, 1977, see section 2(g) of Pub. L. 96-483, set out as an Effective Date of 1980 Amendment note under section 1281 of this title.

COST RECOVERY; SUSPENSION OF GRANT REQUIREMENTS THAT INDUSTRIAL USERS MAKE PAYMENTS

Section 75 of Pub. L. 95-217, as amended by Pub. L. 96-148, § 1, Dec. 16, 1978, 93 Stat. 1088; Pub. L. 96-483, § 2(f), Oct. 21, 1980, 94 Stat. 2361, authorized the Administrator of the Environmental Protection Agency to study and report to Congress not later than the last day of the twelfth month which begins after Dec. 27, 1977, cost recovery procedures from industrial users of treatment works to the extent construction costs are attributable to the Federal share of the cost of construction.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1259, 1281, 1285, 1311, 1342 of this title.

§ 1285. Allotment of grant funds

(a) Funds for fiscal years during period June 30, 1972, and September 30, 1977; determination of amount

Sums authorized to be appropriated pursuant to section 1287 of this title for each fiscal year beginning after June 30, 1972, and before September 30, 1977, shall be allotted by the Administrator not later than the January 1st immediately preceding the beginning of the fiscal year for which authorized, except that the allotment for fiscal year 1973 shall be made not later than 30 days after October 18, 1972. Such sums shall be allotted among the States by the Administrator in accordance with regulations promulgated by him, in the ratio that the estimated cost of constructing all needed publicly owned treatment works in each State bears to the estimated cost of construction of all needed public-

ly owned treatment works in all of the States. For the fiscal years ending June 30, 1973, and June 30, 1974, such ratio shall be determined on the basis of table III of House Public Works Committee Print No. 92-50. For the fiscal year ending June 30, 1975, such ratio shall be determined one-half on the basis of table I of House Public Works Committee Print Numbered 93-28 and one-half on the basis of table II of such print, except that no State shall receive an allotment less than that which it received for the fiscal year ending June 30, 1972, as set forth in table III of such print. Allotments for fiscal years which begin after the fiscal year ending June 30, 1975, shall be made only in accordance with a revised cost estimate made and submitted to Congress in accordance with section 1375(b) of this title and only after such revised cost estimate shall have been approved by law specifically enacted after October 18, 1972.

95-30 of the Committee on Public Works and Transportation of the House of Representatives.

(2) Sums authorized to be appropriated pursuant to section 1287 of this title for the fiscal years 1982, 1983, 1984, and 1985 shall be allotted for each such year by the Administrator not later than the tenth day which begins after December 29, 1981. Notwithstanding any other provision of law, sums authorized for the fiscal year ending September 30, 1982, shall be allotted in accordance with table 3 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives. Sums authorized for the fiscal years ending September 30, 1983, September 30, 1984, and September 30, 1985, shall be allotted in accordance with the following table:

(b) Availability and use of funds allotted for fiscal years during period June 30, 1972, and September 30, 1977; reallocation

(1) Any sums allotted to a State under subsection (a) of this section shall be available for obligation under section 1283 of this title on and after the date of such allotment. Such sums shall continue available for obligation in such State for a period of one year after the close of the fiscal year for which such sums are authorized. Any amounts so allotted which are not obligated by the end of such one-year period shall be immediately reallocated by the Administrator, in accordance with regulations promulgated by him, generally on the basis of the ratio used in making the last allotment of sums under this section. Such reallocated sums shall be added to the last allotments made to the States. Any sum made available to a State by reallocation under this subsection shall be in addition to any funds otherwise allotted to such State for grants under this subchapter during any fiscal year.

(2) Any sums which have been obligated under section 1283 of this title and which are released by the payment of the final voucher for the project shall be immediately credited to the State to which such sums were last allotted. Such released sums shall be added to the amounts last allotted to such State and shall be immediately available for obligation in the same manner and to the same extent as such last allotment.

(c) Funds for fiscal years during period October 1, 1977, and September 30, 1981; funds for fiscal years 1982 to 1985; determination of amount

(1) Sums authorized to be appropriated pursuant to section 1287 of this title for the fiscal years during the period beginning October 1, 1977, and ending September 30, 1981, shall be allotted for each such year by the Administrator not later than the tenth day which begins after December 27, 1977. Notwithstanding any other provision of law, sums authorized for the fiscal years ending September 30, 1978, September 30, 1979, September 30, 1980, and September 30, 1981, shall be allotted in accordance with table 3 of Committee Print Numbered

States:	Fiscal years 1983 through 1985
Alabama.....	.011386
Alaska.....	.008101
Arizona.....	.008885
Arkansas.....	.006666
California.....	.072901
Colorado.....	.008154
Connecticut.....	.012487
Delaware.....	.004985
District of Columbia.....	.004965
Florida.....	.034407
Georgia.....	.017234
Hawaii.....	.007895
Idaho.....	.004965
Illinois.....	.048101
Indiana.....	.024566
Iowa.....	.013796
Kansas.....	.009201
Kentucky.....	.012973
Louisiana.....	.011206
Maine.....	.007788
Maryland.....	.024663
Massachusetts.....	.034608
Michigan.....	.043829
Minnesota.....	.015735
Mississippi.....	.009144
Missouri.....	.028257
Montana.....	.004965
Nebraska.....	.005214
Nevada.....	.004965
New Hampshire.....	.010186
New Jersey.....	.041854
New Mexico.....	.004965
New York.....	.113097
North Carolina.....	.018396
North Dakota.....	.004965
Ohio.....	.087383
Oklahoma.....	.008235
Oregon.....	.011618
Pennsylvania.....	.040377
Rhode Island.....	.008750
South Carolina.....	.010442
South Dakota.....	.004965
Tennessee.....	.014607
Texas.....	.038726
Utah.....	.008371
Vermont.....	.004965
Virginia.....	.020881
Washington.....	.017726
West Virginia.....	.015890
Wisconsin.....	.027657
Wyoming.....	.004965
Samoa.....	.000918
Guam.....	.000662

States:	Fiscal years 1983 through 1985
Northern Marianas.....	.000425
Puerto Rico.....	.013295
Pacific Trust Territories.....	.001305
Virgin Islands.....	.000531
United States totals.....	.999998

(d) Availability and use of funds; reallocation

Sums allotted to the States for a fiscal year shall remain available for obligation for the fiscal year for which authorized and for the period of the next succeeding twelve months. The amount of any allotment not obligated by the end of such twenty-four-month period shall be immediately reallocated by the Administrator on the basis of the same ratio as applicable to sums allotted for the then current fiscal year, except that none of the funds reallocated by the Administrator for fiscal year 1978 and for fiscal years thereafter shall be allotted to any State which failed to obligate any of the funds being reallocated. Any sum made available to a State by reallocation under this subsection shall be in addition to any funds otherwise allotted to such State for grants under this subchapter during any fiscal year.

(e) Minimum allotment; additional appropriations; ratio of amount available

For the fiscal years 1978, 1979, 1980, 1981, 1982, 1983, 1984, and 1985, no State shall receive less than one-half of 1 per centum of the total allotment under subsection (c) of this section, except that in the case of Guam, Virgin Islands, American Samoa, and the Trust Territories not more than thirty-three one-hundredths of 1 per centum in the aggregate shall be allotted to all four of these jurisdictions. For the purpose of carrying out this subsection there are authorized to be appropriated, subject to such amounts as are provided in appropriation Acts, not to exceed \$75,000,000 for each of fiscal years 1978, 1979, 1980, 1981, 1982, 1983, 1984, and 1985. If for any fiscal year the amount appropriated under authority of this subsection is less than the amount necessary to carry out this subsection, the amount each State receives under this subsection for such year shall bear the same ratio to the amount such State would have received under this subsection in such year if the amount necessary to carry it out had been appropriated as the amount appropriated for such year bears to the amount necessary to carry out this subsection for such year.

(f) Omitted

(g) Reservation of funds; State management assistance

(1) The Administrator is authorized to reserve each fiscal year not to exceed 2 per centum of the amount authorized under section 1287 of this title for purposes of the allotment made to each State under this section on or after October 1, 1977, except in the case of any fiscal year beginning on or after October 1, 1981, and ending before October 1, 1985, in which case the percentage authorized to be reserved shall not exceed 4 per centum, or \$400,000 whichever

amount is the greater. Sums so reserved shall be available for making grants to such State under paragraph (2) of this subsection for the same period as sums are available from such allotment under subsection (d) of this section, and any such grant shall be available for obligation only during such period. Any grant made from sums reserved under this subsection which has not been obligated by the end of the period for which available shall be added to the amount last allotted to such State under this section and shall be immediately available for obligation in the same manner and to the same extent as such last allotment. Sums authorized to be reserved by this paragraph shall be in addition to and not in lieu of any other funds which may be authorized to carry out this subsection.

(2) The Administrator is authorized to grant to any State from amounts reserved to such State under this subsection, the reasonable costs of administering any aspects of sections 1281, 1283, 1284, and 1292 of this title the responsibility for administration of which the Administrator has delegated to such State. The Administrator may increase such grant to take into account the reasonable costs of administering an approved program under section 1288(b)(4) of this title, administering a statewide waste treatment management planning program under section 1288(b)(4) of this title, and managing waste treatment construction grants for small communities.

(h) Alternate systems for small communities

The Administrator shall set aside from funds authorized for each fiscal year beginning on or after October 1, 1978, four per centum of the sums allotted to any State with a rural population of 25 per centum or more of the total population of such State, as determined by the Bureau of the Census. The Administrator may set aside no more than four per centum of the sums allotted to any other State for which the Governor requests such action. Such sums shall be available only for alternatives to conventional sewage treatment works for municipalities having a population of three thousand five hundred or less, or for the highly dispersed sections of larger municipalities, as defined by the Administrator.

(i) Increase in Federal share for construction; projects utilizing innovative processes and techniques

Not less than one-half of one per centum of funds allotted to a State for each of the fiscal years ending September 30, 1979, September 30, 1980, September 30, 1981, September 30, 1982, September 30, 1983, September 30, 1984, and September 30, 1985, under subsection (a) of this section shall be expended only for increasing the Federal share of grants for construction of treatment works utilizing innovative processes and techniques pursuant to section 1282(a)(2) of this title. Including the expenditures authorized by the preceding sentence, a total of two per centum of the funds allotted to a State for each of the fiscal years ending September 30, 1978, and September 30, 1980, and 3 per centum of the funds allotted to a State for the fiscal year ending September 30, 1981, under subsec-

tion (a) of this section shall be expended only for increasing grants for construction of treatment works from 75 per centum to 85 per centum pursuant to section 1282(a)(2) of this title. Including the expenditures authorized by the first sentence of this subsection, a total (as determined by the Governor of the State) of not less than 4 per centum nor more than 7½ per centum of the funds allotted to such State for any fiscal year beginning after September 30, 1981, under subsection (c) of this section shall be expended only for increasing the Federal share of grants for construction of treatment works pursuant to section 1282(a)(2) of this title.

(j) Water quality management plan

(1) The Administrator shall reserve each fiscal year not to exceed 1 per centum of the sums allotted and available for obligation to each State under this section for each fiscal year beginning on or after October 1, 1981, or \$100,000, whichever amount is the greater.

(2) Such sums shall be used by the Administrator to make grants to the States to carry out water quality management planning, including, but not limited to—

(A) identifying most cost effective and locally acceptable facility and non-point measures to meet and maintain water quality standards;

(B) developing an implementation plan to obtain State and local financial and regulatory commitments to implement measures developed under subparagraph (A);

(C) determining the nature, extent, and causes of water quality problems in various areas of the State and interstate region, and reporting on these annually; and

(D) determining those publicly owned treatment works which should be constructed with assistance under this subchapter, in which areas and in what sequence, taking into account the relative degree of effluent reduction attained, the relative contributions to water quality of other point or nonpoint sources, and the consideration of alternatives to such construction, and implementing section 1313(e) of this title.

(3) In carrying out planning with grants made under paragraph (2) of this subsection, a State shall develop jointly with local, regional, and interstate entities, a plan for carrying out the program and give funding priority to such entities and designated or undesignated public comprehensive planning organizations to carry out the purposes of this subsection.

(4) All activities undertaken under this subsection shall be in coordination with other related provisions of this chapter.

(k) New York City Convention Center

The Administrator shall allot to the State of New York from sums authorized to be appropriated for the fiscal year ending September 30, 1982, an amount necessary to pay the entire cost of conveying sewage from the Convention Center of the city of New York to the Newtown sewage treatment plant, Brooklyn-Queens area, New York. The amount allotted under this subsection shall be in addition to and not in lieu of

any other amounts authorized to be allotted to such State under this chapter.

(June 30, 1948, ch. 758, title II, § 205, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 837, and amended Jan. 2, 1974, Pub. L. 93-243, § 1, 87 Stat. 1069; Dec. 27, 1977, Pub. L. 95-217, §§ 25, 26(a), 27, 28, 91 Stat. 1574, 1575; Oct. 21, 1980, Pub. L. 96-483, § 11, 94 Stat. 2363; Dec. 29, 1981, Pub. L. 97-117, § 18(c), 13-16, 95 Stat. 1625, 1627-1629.)

CODIFICATION

Subsec. (f) provided that sums made available for obligation between Jan. 1, 1975, and Mar. 1, 1975, be available for obligation until Sept. 30, 1976.

AMENDMENTS

1981—Subsec. (c). Pub. L. 97-117, § 13(a), designated existing provision as par. (1) and added par. (2).

Subsec. (e). Pub. L. 97-117, § 13(b), substituted "1981, 1982, 1983, 1984, and 1985" for "and 1981" in two places.

Subsec. (g)(1). Pub. L. 97-117, § 14, inserted "except in the case of any fiscal year beginning on or after October 1, 1981, and ending before October 1, 1985, in which case the percentage authorized to be reserved shall not exceed 4 per centum," following "October 1, 1977," and provision that sums authorized to be reserved be in addition to and not in lieu of any other funds which may be authorized to carry out this subsection.

Subsec. (i). Pub. L. 97-117, § 15(c), substituted "September 30, 1981, September 30, 1982, September 30, 1983, September 30, 1984, and September 30, 1985" for "and September 30, 1981," struck out "from 75 per centum to 85 per centum" following "innovative processes and techniques", and inserted provision that including the expenditures authorized by the first sentence of this subsection, a total, as determined by the State Governor, of not less than 4 per centum nor more than 7½ per centum of the funds allotted to such State for any fiscal year beginning after Sept. 30, 1981, under subsec. (c) of this section be expended only for increasing the Federal share of grants for construction of treatment works pursuant to section 1282(a)(2) of this title.

Subsec. (j). Pub. L. 97-117, § 15, added subsec. (j).

Subsec. (k). Pub. L. 97-117, § 18, added subsec. (k).

1980—Subsec. (g)(1). Pub. L. 96-483 added "of the amount authorized under section 1287 of this title for purposes" following "2 per centum".

1977—Subsec. (a). Pub. L. 95-217, § 25(a), substituted "each fiscal year beginning after June 30, 1972, and before September 30, 1977" for "each fiscal year beginning after June 30, 1972".

Subsecs. (c) to (f). Pub. L. 95-217, § 28(b), added subsecs. (c) to (f).

Subsec. (g). Pub. L. 95-217, § 28(a), added subsec. (g).

Subsec. (h). Pub. L. 95-217, § 27, added subsec. (h).

Subsec. (i). Pub. L. 95-217, § 28, added subsec. (i).

1974—Subsec. (a). Pub. L. 93-243 added provisions that for the fiscal year ending June 30, 1975, the ratio shall be determined one-half on the basis of table I of House Public Works Committee Print Numbered 93-28 and one-half on the basis of table II of such print, except that no State shall receive an allotment less than that which it received for the fiscal year ending June 30, 1973, as set forth in table III of such print and substituted "June 30, 1978" for "June 30, 1974" in the sentence beginning "Allotments for fiscal years".

LIMITATION OF AUTHORIZATION OF APPROPRIATIONS AND ALLOTMENT TO STATES FOR FISCAL YEAR 1982

Pub. L. 97-35, title XVIII, § 1801(b), Aug. 13, 1981, 95 Stat. 764, authorized an appropriation to the Administrator of the Environmental Protection Agency for the

fiscal year ending Sept. 30, 1962, not to exceed \$40,000,000 to carry out section 1285(g) of this title. The Administrator was to make such authorization available to the States in accordance with such section 1285(g) in the same manner and to the same extent as would be the case if \$2,000,000,000 had been authorized under section 1287 of this title, using the same allotment table as was applicable to the fiscal year ending Sept. 30, 1961.

AVAILABILITY OF ALLOTTED SUMS IN SUBSEQUENT YEARS; REALLOTMENT OF UNOBLIGATED SUMS

Section 7 of Pub. L. 96-483 provided that: "Notwithstanding section 206(d) of the Federal Water Pollution Control Act (33 U.S.C. 1285), sums allotted to the States for the fiscal year 1979 shall remain available for obligation for the fiscal year for which authorized and for the period of the next succeeding twenty-four months. The amount of any allotment not obligated by the end of such thirty-six month period shall be immediately reallocated by the Administrator on the basis of the same ratio as applicable to sums allotted for the then current fiscal year, except that none of the funds reallocated by the Administrator for fiscal year 1979 shall be allotted to any State which failed to obligate any of the funds being reallocated. Any sum made available to a State by reallocation under this section shall be in addition to any funds otherwise allotted to such State for grants under title II of the Federal Water Pollution Control Act (this subchapter) during any fiscal year. This section shall take effect on September 30, 1980."

PERIOD OF JULY 1, 1975, THROUGH SEPTEMBER 30, 1976, CONSIDERED AS ONE YEAR

Period of July 1, 1975, through Sept. 30, 1976, considered as one year for purposes of subsec. (b)(1) of this section, see section 206(5) of Pub. L. 94-274, title II, Apr. 23, 1976, 90 Stat. 384, set out as a note under section 289c-2 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1289, 1266, 1281, 1282, 1283 of this title.

§ 1284. Reimbursement and advanced construction

(a) Publicly owned treatment works construction initiated after June 30, 1966, but before July 1, 1973; reimbursement formula

Any publicly owned treatment works in a State on which construction was initiated after June 30, 1966, but before July 1, 1973, which was approved by the appropriate State water pollution control agency and which the Administrator finds meets the requirements of section 1158 of this title in effect at the time of the initiation of construction shall be reimbursed a total amount equal to the difference between the amount of Federal financial assistance, if any, received under such section 1158 of this title for such project and 50 per centum of the cost of such project, or 55 per centum of the project cost where the Administrator also determines that such treatment works was constructed in conformity with a comprehensive metropolitan treatment plan as described in section 1158(f) of this title as in effect immediately prior to October 18, 1972. Nothing in this subsection shall result in any such works receiving Federal grants from all sources in excess of 80 per centum of the cost of such project.

(b) Publicly owned treatment works construction initiated between June 30, 1956, and June 30, 1966; reimbursement formula

Any publicly owned treatment works constructed with or eligible for Federal financial assistance under this Act in a State between June 30, 1956, and June 30, 1966, which was approved by the State water pollution control agency and which the Administrator finds meets the requirements of section 1158 of this title prior to October 18, 1972 but which was constructed without assistance under such section 1158 of this title or which received such assistance in an amount less than 30 per centum of the cost of such project shall qualify for payments and reimbursement of State or local funds used for such project from sums allocated to such State under this section in an amount which shall not exceed the difference between the amount of such assistance, if any, received for such project and 30 per centum of the cost of such project.

(c) Application for reimbursement

No publicly owned treatment works shall receive any payment or reimbursement under subsection (a) or (b) of this section unless an application for such assistance is filed with the Administrator within the one year period which begins on October 18, 1972. Any application filed within such one year period may be revised from time to time, as may be necessary.

(d) Allocation of funds

The Administrator shall allocate to each qualified project under subsection (a) of this section each fiscal year for which funds are appropriated under subsection (e) of this section an amount which bears the same ratio to the unpaid balance of the reimbursement due such project as the total of such funds for such year bears to the total unpaid balance of reimbursement due all such approved projects on the date of enactment of such appropriation. The Administrator shall allocate to each qualified project under subsection (b) of this section each fiscal year for which funds are appropriated under subsection (e) of this section an amount which bears the same ratio to the unpaid balance of the reimbursement due such project as the total of such funds for such year bears to the total unpaid balance of reimbursement due all such approved projects on the date of enactment of such appropriation.

(e) Authorization of appropriations

There is authorized to be appropriated to carry out subsection (a) of this section not to exceed \$2,600,000,000 and, to carry out subsection (b) of this section, not to exceed \$750,000,000. The authorizations contained in this subsection shall be the sole source of funds for reimbursements authorized by this section.

(f) Additional funds

(1) In any case where a substantial portion of the funds allotted to a State for the current fiscal year under this subchapter have been obligated under section 1281(g) of this title, or will be so obligated in a timely manner (as determined by the Administrator), and there is

construction of any treatment works project without the aid of Federal funds and in accordance with all procedures and all requirements applicable to treatment works projects, except those procedures and requirements which limit construction of projects to those constructed with the aid of previously allotted Federal funds, the Administrator, upon his approval of an application made under this subsection therefor, is authorized to pay the Federal share of the cost of construction of such project when additional funds are allotted to the State under this subchapter if prior to the construction of the project the Administrator approves plans, specifications, and estimates therefor in the same manner as other treatment works projects. The Administrator may not approve an application under this subsection unless an authorization is in effect for the first fiscal year in the period for which the application requests payment and such requested payment for that fiscal year does not exceed the State's expected allotment from such authorization. The Administrator shall not be required to make such requested payment for any fiscal year—

(A) to the extent that such payment would exceed such State's allotment of the amount appropriated for such fiscal year; and

(B) unless such payment is for a project which, on the basis of an approved funding priority list of such State, is eligible to receive such payment based on the allotment and appropriation for such fiscal year.

To the extent that sufficient funds are not appropriated to pay the full Federal share with respect to a project for which obligations under the provisions of this subsection have been made, the Administrator shall reduce the Federal share to such amount less than 75 per centum as such appropriations do provide.

(2) In determining the allotment for any fiscal year under this subchapter, any treatment works project constructed in accordance with this section and without the aid of Federal funds shall not be considered completed until an application under the provisions of this subsection with respect to such project has been approved by the Administrator, or the availability of funds from which this project is eligible for reimbursement has expired, whichever first occurs.

(June 30, 1948, ch. 758, title II, § 206, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 836, and amended Dec. 28, 1973, Pub. L. 93-207, § 1(2), 87 Stat. 906; Dec. 27, 1977, Pub. L. 95-217, § 29(a), 91 Stat. 1576; Oct. 21, 1980, Pub. L. 96-483, § 5, 94 Stat. 2361.)

REFERENCES IN TEXT

Section 1158 of this title, referred to in subsec. (a) and (b), refers to section 5 of act June 30, 1948, ch. 758, 62 Stat. 1158, prior to the superseding and reenactment of act June 30, 1948, by act Oct. 18, 1972, Pub. L. 92-500, 86 Stat. 816. Provisions of section 1158 of this title are covered by this subchapter.

This Act, referred to in subsec. (b), means act June 30, 1948, ch. 758, 62 Stat. 1158, prior to the superseding and reenactment of act June 30, 1948 by act Oct. 18, 1972, Pub. L. 92-500, 86 Stat. 816. Act June 30, 1948, ch. 758, as added by act Oct. 18, 1972, Pub. L. 92-500, 86 Stat. 816, enacted this chapter.

AMENDMENTS

1980—Subsec. (f)(1). Pub. L. 96-483 substituted "In any case where a substantial portion of the funds allotted to a State for the current fiscal year under this subchapter have been obligated under section 1281(g) of this title, or will be so obligated in a timely manner (as determined by the Administrator)" for "In any case where all funds allotted to a State under this subchapter have been obligated under section 1283 of this title", substituted "first fiscal year" for "future fiscal year", added "in the period" preceding "for which the application", substituted "and such requested payment for that fiscal year does not exceed the State's expected allotment from such authorization. The Administrator shall not be required to make such requested payment for any fiscal year—" for "which authorization will insure such payment without exceeding the State's expected allotment from such authorization", and added subpars. (A), (B), and provisions following subpar. (B).

1977—Subsec. (a). Pub. L. 95-217 substituted "July 1, 1973" for "July 1, 1972".

1973—Subsec. (a). Pub. L. 93-207 substituted "\$2,600,000,000" for "\$2,000,000,000".

APPLICATION FOR ASSISTANCE FOR PUBLICLY OWNED TREATMENT WORKS WHERE GRANTS WERE MADE BEFORE JULY 2, 1972, AND ON WHICH CONSTRUCTION WAS INITIATED BEFORE JULY 1, 1973

Section 29(b) of Pub. L. 95-217 provided that applications for assistance for publicly owned treatment works for which a grant was made under this chapter before July 1, 1972, and on which construction was initiated before July 1, 1973, be filed not later than the ninetieth day after Dec. 27, 1977.

APPLICATION FOR ASSISTANCE

Section 3 of Pub. L. 93-207 provided that notwithstanding the requirements of subsec. (c) of this section, applications for assistance under this section could have been filed with the Administrator until Jan. 31, 1974.

ALLOCATION OF CONSTRUCTION GRANTS APPROPRIATED FOR THE YEAR ENDING JUNE 30, 1973; INTERIM PAYMENTS; LIMITATIONS

Section 3 of Pub. L. 93-207 provided that: "Funds available for reimbursement under Public Law 92-399 (making appropriations for Agriculture-Environmental and Consumer Protection Programs for the fiscal year ending June 30, 1973) shall be allocated in accordance with subsection (d) of section 206 of the Federal Water Pollution Control Act (86 Stat. 838) (subsec. (d) of this section), pro rata among all projects eligible under subsection (a) of such section 206 (subsec. (a) of this section) for which applications have been submitted and approved by the Administrator pursuant to such Act (this chapter). Notwithstanding the provisions of subsection (d) of such section 206, (1) the Administrator is authorized to make interim payments to each such project for which an application has been approved on the basis of estimates of maximum pro rata entitlement of all applicants under section 206(a) and (2) for the purpose of determining allocation of sums available under Public Law 92-399, the unpaid balance of reimbursement due such projects shall be computed as of January 31, 1974. Upon completion by the Administrator of his audit and approval of all projects for which an application has been filed under subsection (a) of such section 206, the Administrator shall, within the limits of appropriated funds, allocate to each such qualified project the amount remaining, if any, of its total entitlement. Amounts allocated to projects which are later determined to be in excess of entitlement shall be available for reallocation, until expended, to other qualified projects under subsection (a) of such section 206. In no event, however, shall any payments exceed the Feder-

al share of the cost of construction incurred to the date of the voucher covering such payment plus the Federal share of the value of the materials which have been stockpiled in the vicinity of such construction in conformity to plans and specifications for the project."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1287, 1293, 1376 of this title.

§ 1287. Authorization of appropriations

There is authorized to be appropriated to carry out this subchapter, other than sections 1286(e), 1288 and 1289 of this title, for the fiscal year ending June 30, 1973, not to exceed \$5,000,000,000, for the fiscal year ending June 30, 1974, not to exceed \$6,000,000,000, and for the fiscal year ending June 30, 1975, not to exceed \$7,000,000,000, and subject to such amounts as are provided in appropriation Acts, for the fiscal year ending September 30, 1977, \$1,000,000,000 for the fiscal year ending September 30, 1978, \$4,500,000,000 and for the fiscal years ending September 30, 1979, September 30, 1980, not to exceed \$5,000,000,000; for the fiscal year ending September 30, 1981, not to exceed \$2,548,837,000; and for the fiscal years ending September 30, 1982, September 30, 1983, September 30, 1984, and September 30, 1985, not to exceed \$2,400,000,000 per fiscal year.

(June 30, 1948, ch. 788, title II, § 207, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 339, and amended Dec. 28, 1973, Pub. L. 93-207, § 1(3), 87 Stat. 908; Dec. 27, 1977, Pub. L. 95-217, § 30, 91 Stat. 1876; Aug. 13, 1981, Pub. L. 97-35, title XVIII, § 1801(a), 95 Stat. 704; Dec. 29, 1981, Pub. L. 97-117, § 17, 95 Stat. 1830.)

Annotations

1981—Pub. L. 97-117 substituted "and for the fiscal years ending September 30, 1982, September 30, 1983, September 30, 1984, and September 30, 1985, not to exceed \$2,400,000,000 per fiscal year" for "and for the fiscal year ending September 30, 1982, not to exceed \$0, unless there is enacted legislation establishing an allotment formula for fiscal year 1982 construction grant funds and otherwise reforming the municipal sewage treatment construction grant program under this subchapter, in which case the authorization for fiscal year 1982 shall be an amount not to exceed \$2,400,000,000".

Pub. L. 97-35 substituted provisions authorizing not to exceed \$2,548,837,000 for fiscal year ending Sept. 30, 1981, and not to exceed \$0 for the fiscal year ending Sept. 30, 1982, unless an allotment formula is enacted, in which case the authorization is not to exceed \$2,400,000,000, for provisions authorizing not to exceed \$5,000,000,000 for fiscal years ending Sept. 30, 1981 and 1982.

1977—Pub. L. 95-217 added "and subject to such amounts as are provided in appropriation Acts, for the fiscal year ending September 30, 1977, \$1,000,000,000 for the fiscal year ending September 30, 1978, \$4,500,000,000 and for the fiscal years ending September 30, 1979, September 30, 1980, September 30, 1981, and September 30, 1982, not to exceed \$5,000,000,000 per fiscal year".

1973—Pub. L. 93-207 added reference to section 1286(e) of this title.

ADDITIONAL AUTHORIZATION OF APPROPRIATIONS

Pub. L. 94-389, title III, § 301, July 22, 1976, 90 Stat. 1011, provided for authorization to carry out this sub-

chapter, other than sections 1286, 1288, and 1289, for the fiscal year ending Sept. 30, 1977, not to exceed \$700,000,000, which sum (subject to amounts provided in appropriation Acts) was to be allotted to each State listed in column 1 of table IV contained in House Public Works and Transportation Committee Print numbered 84-25 in accordance with the percentages provided for such State (if any) in column 5 of such table, and such sum to be in addition to, and not in lieu of, any funds otherwise authorized and to be available until expended.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1281, 1285, 1376 of this title.

§ 1288. Area-wide waste treatment management

(a) Identification and designation of areas having substantial water quality control problems

For the purpose of encouraging and facilitating the development and implementation of area-wide waste treatment management plans—

(1) The Administrator, within ninety days after October 18, 1972, and after consultation with appropriate Federal, State, and local authorities, shall by regulation publish guidelines for the identification of those areas which, as a result of urban-industrial concentrations or other factors, have substantial water quality control problems.

(2) The Governor of each State, within sixty days after publication of the guidelines issued pursuant to paragraph (1) of this subsection, shall identify each area within the State which, as a result of urban-industrial concentrations or other factors, has substantial water quality control problems. Not later than one hundred and twenty days following such identification and after consultation with appropriate elected and other officials of local governments having jurisdiction in such areas, the Governor shall designate (A) the boundaries of each such area, and (B) a single representative organization, including elected officials from local governments or their designees, capable of developing effective area-wide waste treatment management plans for such area. The Governor may in the same manner at any later time identify any additional area (or modify an existing area) for which he determines area-wide waste treatment management to be appropriate, designate the boundaries of such area, and designate an organization capable of developing effective area-wide waste treatment management plans for such area.

(3) With respect to any area which, pursuant to the guidelines published under paragraph (1) of this subsection, is located in two or more States, the Governors of the respective States shall consult and cooperate in carrying out the provisions of paragraph (2), with a view toward designating the boundaries of the interstate area having common water quality control problems and for which area-wide waste treatment management plans would be most effective, and toward designating, within one hundred and eighty days after publication of guidelines issued pursuant to paragraph (1) of this subsection, of a single representative organization capable of devel-

oping effective areawide waste treatment management plans for such area.

(4) If a Governor does not act, either by designating or determining not to make a designation under paragraph (2) of this subsection, within the time required by such paragraph, or if, in the case of an interstate area, the Governors of the States involved do not designate a planning organization within the time required by paragraph (3) of this subsection, the chief elected officials of local governments within an area may by agreement designate (A) the boundaries for such an area, and (B) a single representative organization including elected officials from such local governments, or their designees, capable of developing an areawide waste treatment management plan for such area.

(5) Existing regional agencies may be designated under paragraphs (2), (3), and (4) of this subsection.

(6) The State shall act as a planning agency for all portions of such State which are not designated under paragraphs (2), (3), or (4) of this subsection.

(7) Designations under this subsection shall be subject to the approval of the Administrator.

(b) Planning process

(1)(A) Not later than one year after the date of designation of any organization under subsection (a) of this section such organization shall have in operation a continuing areawide waste treatment management planning process consistent with section 1281 of this title. Plans prepared in accordance with this process shall contain alternatives for waste treatment management, and be applicable to all wastes generated within the area involved. The initial plan prepared in accordance with such process shall be certified by the Governor and submitted to the Administrator not later than two years after the planning process is in operation.

(B) For any agency designated after 1975 under subsection (a) of this section and for all portions of a State for which the State is required to act as the planning agency in accordance with subsection (a)(6) of this section, the initial plan prepared in accordance with such process shall be certified by the Governor and submitted to the Administrator not later than three years after the receipt of the initial grant award authorized under subsection (f) of this section.

(2) Any plan prepared under such process shall include, but not be limited to—

(A) the identification of treatment works necessary to meet the anticipated municipal and industrial waste treatment needs of the area over a twenty-year period, annually updated (including an analysis of alternative waste treatment systems), including any requirements for the acquisition of land for treatment purposes; the necessary waste water collection and urban storm water runoff systems; and a program to provide the necessary financial arrangements for the development of such treatment works, and an identification of open space and recreation opportunities that can be expected to result

from improved water quality, including consideration of potential use of lands associated with treatment works and increased access to water-based recreation;

(B) the establishment of construction priorities for such treatment works and time schedules for the initiation and completion of all treatment works;

(C) the establishment of a regulatory program to—

(i) implement the waste treatment management requirements of section 1281(c) of this title,

(ii) regulate the location, modification, and construction of any facilities within such area which may result in any discharge in such area, and

(iii) assure that any industrial or commercial wastes discharged into any treatment works in such area meet applicable pretreatment requirements;

(D) the identification of those agencies necessary to construct, operate, and maintain all facilities required by the plan and otherwise to carry out the plan;

(E) the identification of the measures necessary to carry out the plan (including financing), the period of time necessary to carry out the plan, the costs of carrying out the plan within such time, and the economic, social, and environmental impact of carrying out the plan within such time;

(F) a process to (i) identify, if appropriate, agriculturally and silviculturally related nonpoint sources of pollution, including return flows from irrigated agriculture, and their cumulative effects, runoff from manure disposal areas, and from land used for livestock and crop production, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

(G) a process to (i) identify, if appropriate, mine-related sources of pollution including new, current, and abandoned surface and underground mine runoff, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

(H) a process to (i) identify construction activity related sources of pollution, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

(I) a process to (i) identify, if appropriate, salt water intrusion into rivers, lakes, and estuaries resulting from reduction of fresh water flow from any cause, including irrigation, obstruction, ground water extraction, and diversion, and (ii) set forth procedures and methods to control such intrusion to the extent feasible where such procedures and methods are otherwise a part of the waste treatment management plan;

(J) a process to control the disposition of all residual waste generated in such area which could affect water quality; and

(K) a process to control the disposal of pollutants on land or in subsurface excavations

within such area to protect ground and surface water quality.

(3) Areawide waste treatment management plans shall be certified annually by the Governor or his designee (or Governors or their designees, where more than one State is involved) as being consistent with applicable basin plans and such areawide waste treatment management plans shall be submitted to the Administrator for his approval.

(4XA) Whenever the Governor of any State determines (and notifies the Administrator) that consistency with a statewide regulatory program under section 1313 of this title so requires, the requirements of clauses (P) through (K) of paragraph (2) of this subsection shall be developed and submitted by the Governor to the Administrator for approval for application to a class or category of activity throughout such State.

(B) Any program submitted under subparagraph (A) of this paragraph which, in whole or in part, is to control the discharge or other placement of dredged or fill material into the navigable waters shall include the following:

(i) A consultation process which includes the State agency with primary jurisdiction over fish and wildlife resources.

(ii) A process to identify and manage the discharge or other placement of dredged or fill material which adversely affects navigable waters, which shall complement and be coordinated with a State program under section 1344 of this title conducted pursuant to this chapter.

(iii) A process to assure that any activity conducted pursuant to a best management practice will comply with the guidelines established under section 1344(b)(1) of this title, and sections 1317 and 1343 of this title.

(iv) A process to assure that any activity conducted pursuant to a best management practice can be terminated or modified for cause including, but not limited to, the following:

(I) violation of any condition of the best management practice;

(II) change in any activity that requires either a temporary or permanent reduction or elimination of the discharge pursuant to the best management practice.

(v) A process to assure continued coordination with Federal and Federal-State water-related planning and reviewing processes, including the National Wetlands Inventory.

(C) If the Governor of a State obtains approval from the Administrator of a statewide regulatory program which meets the requirements of subparagraph (B) of this paragraph and if such State is administering a permit program under section 1344 of this title, no person shall be required to obtain an individual permit pursuant to such section, or to comply with a general permit issued pursuant to such section, with respect to any appropriate activity within such State for which a best management practice has been approved by the Administrator under the program approved by the Administrator pursuant to this paragraph.

(DK1) Whenever the Administrator determines after public hearing that a State is not

administering a program approved under this section in accordance with the requirements of this section, the Administrator shall so notify the State, and if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw approval of such program. The Administrator shall not withdraw approval of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

(ii) In the case of a State with a program submitted and approved under this paragraph, the Administrator shall withdraw approval of such program under this subparagraph only for a substantial failure of the State to administer its program in accordance with the requirements of this paragraph.

(c) Regional operating agencies

(1) The Governor of each State, in consultation with the planning agency designated under subsection (a) of this section, at the time a plan is submitted to the Administrator, shall designate one or more waste treatment management agencies (which may be an existing or newly created local, regional, or State agency or political subdivision) for each area designated under subsection (a) of this section and submit such designations to the Administrator.

(2) The Administrator shall accept any such designation, unless, within 120 days of such designation, he finds that the designated management agency (or agencies) does not have adequate authority—

(A) to carry out appropriate portions of an areawide waste treatment management plan developed under subsection (b) of this section;

(B) to manage effectively waste treatment works and related facilities serving such area in conformance with any plan required by subsection (b) of this section;

(C) directly or by contract, to design and construct new works, and to operate and maintain new and existing works as required by any plan developed pursuant to subsection (b) of this section;

(D) to accept and utilize grants, or other funds from any source, for waste treatment management purposes;

(E) to raise revenues, including the assessment of waste treatment charges;

(F) to incur short- and long-term indebtedness;

(G) to assure in implementation of an areawide waste treatment management plan that each participating community pays its proportionate share of treatment costs;

(H) to refuse to receive any wastes from any municipality or subdivision thereof, which does not comply with any provisions of an approved plan under this section applicable to such area; and

(I) to accept for treatment industrial wastes.

(d) Conformity of works with area plan

After a waste treatment management agency having the authority required by subsection (c) of this section has been designated under such

subsection for an area and a plan for such area has been approved under subsection (b) of this section, the Administrator shall not make any grant for construction of a publicly owned treatment works under section 1281(g)(1) of this title within such area except to such designated agency and for works in conformity with such plan.

(c) **Permits not to conflict with approved plans**

No permit under section 1342 of this title shall be issued for any point source which is in conflict with a plan approved pursuant to subsection (b) of this section.

(f) **Grants**

(1) The Administrator shall make grants to any agency designated under subsection (a) of this section for payment of the reasonable costs of developing and operating a continuing areawide waste treatment management planning process under subsection (b) of this section.

(2) For the two-year period beginning on the date the first grant is made under paragraph (1) of this subsection to an agency, if such first grant is made before October 1, 1977, the amount of each such grant to such agency shall be 100 per centum of the costs of developing and operating a continuing areawide waste treatment management planning process under subsection (b) of this section, and thereafter the amount granted to such agency shall not exceed 75 per centum of such costs in each succeeding one-year period. In the case of any other grant made to an agency under such paragraph (1) of this subsection, the amount of such grant shall not exceed 75 per centum of the costs of developing and operating a continuing areawide waste treatment management planning process in any year.

(3) Each applicant for a grant under this subsection shall submit to the Administrator for his approval each proposal for which a grant is applied for under this subsection. The Administrator shall act upon such proposal as soon as practicable after it has been submitted, and his approval of that proposal shall be deemed a contractual obligation of the United States for the payment of its contribution to such proposal, subject to such amounts as are provided in appropriation Acts. There is authorized to be appropriated to carry out this subsection not to exceed \$50,000,000 for the fiscal year ending June 30, 1973, not to exceed \$100,000,000 for the fiscal year ending June 30, 1974, and not to exceed \$150,000,000 per fiscal year for the fiscal years ending June 30, 1975, September 30, 1977, September 30, 1978, September 30, 1979, and September 30, 1980, and not to exceed \$100,000,000 per fiscal year for the fiscal years ending September 30, 1981, and September 30, 1982.

(g) **Technical assistance by Administrator**

The Administrator is authorized, upon request of the Governor or the designated planning agency, and without reimbursement, to consult with, and provide technical assistance to, any agency designated under subsection (a) of this section in the development of areawide waste treatment management plans under subsection (b) of this section.

(h) **Technical assistance by Secretary of the Army**

(1) The Secretary of the Army, acting through the Chief of Engineers, in cooperation with the Administrator is authorized and directed, upon request of the Governor or the designated planning organization, to consult with, and provide technical assistance to, any agency designated² under subsection (a) of this section in developing and operating a continuing areawide waste treatment management planning process under subsection (b) of this section.

(2) There is authorized to be appropriated to the Secretary of the Army, to carry out this subsection, not to exceed \$50,000,000 per fiscal year for the fiscal years ending June 30, 1973, and June 30, 1974.

(i) **State best management practices program**

(1) The Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, shall, upon request of the Governor of a State, and without reimbursement, provide technical assistance to such State in developing a statewide program for submission to the Administrator under subsection (b)(4)(B) of this section and in implementing such program after its approval.

(2) There is authorized to be appropriated to the Secretary of the Interior \$8,000,000 to complete the National Wetlands Inventory of the United States, by December 31, 1981, and to provide information from such inventory to States as it becomes available to assist such States in the development and operation of programs under this chapter.

(j) **Agricultural cost sharing**

(1) The Secretary of Agriculture, with the concurrence of the Administrator, and acting through the Soil Conservation Service and such other agencies of the Department of Agriculture as the Secretary may designate, is authorized and directed to establish and administer a program to enter into contracts, subject to such amounts as are provided in advance by appropriation acts, of not less than five years nor more than ten years with owners and operators having control of rural land for the purpose of installing and maintaining measures incorporating best management practices to control nonpoint source pollution for improved water quality in those States or areas for which the Administrator has approved a plan under subsection (b) of this section where the practices to which the contracts apply are certified by the management agency designated under subsection (c)(1) of this section to be consistent with such plans and will result in improved water quality. Such contracts may be entered into during the period ending not later than September 31, 1988. Under such contracts the land owner or operator shall agree—

(1) to effectuate a plan approved by a soil conservation district, where one exists, under this section for his farm, ranch, or other land substantially in accordance with the schedule outlined therein unless any requirement

²So in original. Probably should be "designated".

thereof is waived or modified by the Secretary;

(ii) to forfeit all rights to further payments or grants under the contract and refund to the United States all payments and grants received thereunder, with interest, upon his violation of the contract at any stage during the time he has control of the land if the Secretary, after considering the recommendations of the soil conservation district, where one exists, and the Administrator, determines that such violation is of such a nature as to warrant termination of the contract, or to make refunds or accept such payment adjustments as the Secretary may deem appropriate if he determines that the violation by the owner or operator does not warrant termination of the contract;

(iii) upon transfer of his right and interest in the farm, ranch, or other land during the contract period to forfeit all rights to further payments or grants under the contract and refund to the United States all payments or grants received thereunder, with interest, unless the transferee of any such land agrees with the Secretary to assume all obligations of the contract;

(iv) not to adopt any practice specified by the Secretary on the advice of the Administrator in the contract as a practice which would tend to defeat the purposes of the contract;

(v) to such additional provisions as the Secretary determines are desirable and includes in the contract to effectuate the purposes of the program or to facilitate the practical administration of the program.

(2) In return for such agreement by the landowner or operator the Secretary shall agree to provide technical assistance and share the cost of carrying out those conservation practices and measures set forth in the contract for which he determines that cost sharing is appropriate and in the public interest and which are approved for cost sharing by the agency designated to implement the plan developed under subsection (b) of this section. The portion of such cost (including labor) to be shared shall be that part which the Secretary determines is necessary and appropriate to effectuate the installation of the water quality management practices and measures under the contract, but not to exceed 50 per centum of the total cost of the measures set forth in the contract; except the Secretary may increase the matching cost share where he determines that (1) the main benefits to be derived from the measures are related to improving offsite water quality, and (2) the matching share requirement would place a burden on the landowner which would probably prevent him from participating in the program.

(3) The Secretary may terminate any contract with a landowner or operator by mutual agreement with the owner or operator if the Secretary determines that such termination would be in the public interest, and may agree to such modification of contracts previously entered into as he may determine to be desirable to carry out the purposes of the program or facilitate the practical administration thereof or to accomplish equitable treatment with respect

to other conservation, land use, or water quality programs.

(4) In providing assistance under this subsection the Secretary will give priority to those areas and sources that have the most significant effect upon water quality. Additional investigations or plans may be made, where necessary, to supplement approved water quality management plans, in order to determine priorities.

(5) The Secretary shall, where practicable, enter into agreements with soil conservation districts, State soil and water conservation agencies, or State water quality agencies to administer all or part of the program established in this subsection under regulations developed by the Secretary. Such agreements shall provide for the submission of such reports as the Secretary deems necessary, and for payment by the United States of such portion of the costs incurred in the administration of the program as the Secretary may deem appropriate.

(6) The contracts under this subsection shall be entered into only in areas where the management agency designated under subsection (c)(1) of this section assures an adequate level of participation by owners and operators having control of rural land in such areas. Within such areas the local soil conservation district, where one exists, together with the Secretary of Agriculture, will determine the priority of assistance among individual land owners and operators to assure that the most critical water quality problems are addressed.

(7) The Secretary, in consultation with the Administrator and subject to section 1314(k) of this title, shall, not later than September 30, 1978, promulgate regulations for carrying out this subsection and for support and cooperation with other Federal and non-Federal agencies for implementation of this subsection.

(8) This program shall not be used to authorize or finance projects that would otherwise be eligible for assistance under the terms of Public Law 83-566 [16 U.S.C. 1001 et seq.].

(9) There are hereby authorized to be appropriated to the Secretary of Agriculture \$200,000,000 for fiscal year 1978, \$400,000,000 for fiscal year 1980, \$100,000,000 for fiscal year 1981, and \$100,000,000 for fiscal year 1982, to carry out this subsection. The program authorized under this subsection shall be in addition to, and not in substitution of, other programs in such area authorized by this or any other public law.

(June 30, 1948, ch. 758, title II, § 206, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 839, and amended Dec. 27, 1977, Pub. L. 95-217, §§ 4(e), 31, 32, 33(a), 34, 35, 91 Stat. 1566, 1576-1579; Oct. 21, 1980, Pub. L. 96-483, § 1(d), (e), 94 Stat. 2360.)

REFERENCES IN TEXT

Public Law 83-566, referred to in subsec. (9)(9), is act Aug. 4, 1964, ch. 488, 88 Stat. 668, as amended, known as the Watershed Protection and Flood Prevention Act, which is classified generally to chapter 18 (§ 1001 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 16 and Tables.

AMENDMENTS

1980—Subsec. (f)(3). Pub. L. 96-483, § 1(d), added authorization of not to exceed \$100,000,000 per fiscal year for fiscal years ending Sept. 30, 1981 and 1982.

Subsec. (j)(9). Pub. L. 96-483, § 1(e), added reference to authorization of \$100,000,000 for each of fiscal years 1981 and 1982.

1977—Subsec. (b)(1). Pub. L. 95-217, § 31(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b)(2)(A). Pub. L. 95-217, § 32, added “, and an identification of open space and recreation opportunities that can be expected to result from improved water quality, including consideration of potential use of lands associated with treatment works and increased access to water-based recreation” following “development of such treatment works”.

Subsec. (b)(2)(F). Pub. L. 95-217, § 33(a), substituted “sources of pollution, including return flows from irrigated agriculture, and their cumulative effects,” for “sources of pollution, including”.

Subsec. (b)(4). Pub. L. 95-217, § 34(a), designated existing provisions as subpar. (A), substituted “to the Administrator for approval for application to a class or category of activity throughout such State” for “to the Administrator for application to all regions within such State” in subpar. (A) as so designated, and added subpars. (B) to (D).

Subsec. (f)(3). Pub. L. 95-217, § 31(b), substituted “For the two-year period beginning on the date the first grant is made under paragraph (1) of this subsection to an agency, if such first grant is made before October 1, 1977, the amount of such grant to such agency shall be 100 per centum of the costs of developing and operating a continuing areawide waste treatment management planning process under subsection (b) of this section, and thereafter the amount granted to such agency shall not exceed 75 per centum of such costs in each succeeding one-year period” for “The amount granted to any agency under paragraph (1) of this subsection shall be 100 per centum of the costs of developing and operating a continuing areawide waste treatment management planning process under subsection (b) of this section for each of the fiscal years ending on June 30, 1973, June 30, 1974, and June 30, 1975, and shall not exceed 75 per centum of such costs in each succeeding fiscal year” and added “In the case of any other grant made to an agency under such paragraph (1) of this subsection, the amount of such grant shall not exceed 75 per centum of the costs of developing and operating a continuing areawide waste treatment management planning process in any year.”

Subsec. (f)(8). Pub. L. 95-217, § 4(e), 31(c), substituted “and not to exceed \$150,000,000 per fiscal year for the fiscal years ending June 30, 1975, September 30, 1977, September 30, 1978, September 30, 1979, and September 30, 1980” for “and not to exceed \$150,000,000 for the fiscal year ending June 30, 1975” and added “subject to such amounts as are provided in appropriation Acts” following “contractual obligation of the United States for the payment of its contribution to such proposal”.

Subsec. (i). Pub. L. 95-217, § 34(b), added subsec. (i).

Subsec. (j). Pub. L. 95-217, § 35, added subsec. (j).

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, relating to compliance with this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of the date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(f), 203(a), 44 F.R. 33883, 33966, 99

Stat. 1373, 1376, effective July 1, 1979, set out under section 179e of Title 15, Commerce and Trade.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1252, 1284, 1285, 1287, 1289, 1313, 1314, 1344, 1362, 1375, 1376 of this title; title 26 section 126; title 42 section 6946.

§ 1289. Basin planning

(a) Preparation of Level B plans

The President, acting through the Water Resources Council, shall, as soon as practicable, prepare a Level B plan under the Water Resources Planning Act [42 U.S.C. 1962 et seq.] for all basins in the United States. All such plans shall be completed not later than January 1, 1980, except that priority in the preparation of such plans shall be given to those basins and portions thereof which are within those areas designated under paragraphs (2), (3), and (4) of subsection (a) of section 1288 of this title.

(b) Reporting requirements

The President, acting through the Water Resources Council, shall report annually to Congress on progress being made in carrying out this section. The first such report shall be submitted not later than January 31, 1973.

(c) Authorization of appropriations

There is authorized to be appropriated to carry out this section not to exceed \$200,000,000.

(June 30, 1948, ch. 758, title II, § 209, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 843.)

REFERENCES IN TEXT

The Water Resources Planning Act, referred to in subsec. (a), is Pub. L. 89-90, July 22, 1965, 79 Stat. 244, as amended, which is classified generally to chapter 19B (§ 1962 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1962 of Title 42 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1287, 1313, 1375, 1376 of this title.

§ 1290. Annual survey

The Administrator shall annually make a survey to determine the efficiency of the operation and maintenance of treatment works constructed with grants made under this chapter, as compared to the efficiency planned at the time the grant was made. The results of such annual survey shall be included in the report required under section 1375(a) of this title.

(June 30, 1948, ch. 758, title II, § 210, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 843.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1375 of this title.

§ 1291. Sewage collection systems

(a) Existing and new systems

No grant shall be made for a sewage collection system under this subchapter unless such grant (1) is for replacement or major rehabilita-

tion of an existing collection system and is necessary to the total integrity and performance of the waste treatment works servicing such community, or (2) is for a new collection system in an existing community with sufficient existing or planned capacity adequately to treat such collected sewage and is consistent with section 1281 of this title.

(b) Use of population density as test

If the Administrator uses population density as a test for determining the eligibility of a collector sewer for assistance it shall be only for the purpose of evaluating alternatives and determining the needs for such system in relation to ground or surface water quality impact.

(c) Pollutant discharges from separate storm sewer systems

No grant shall be made under this subchapter from funds authorized for any fiscal year during the period beginning October 1, 1977, and ending September 30, 1985, for treatment works for control of pollutant discharges from separate storm sewer systems.

(June 30, 1948, ch. 758, title II, § 211, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 843, and amended Dec. 27, 1977, Pub. L. 95-217, § 36, 91 Stat. 1581; Dec. 29, 1981, Pub. L. 97-117, § 2(b), 95 Stat. 1623.)

AMENDMENTS

1981—Subsec. (c), Pub. L. 97-117 substituted "September 30, 1985" for "September 30, 1982".
1977—Pub. L. 95-217 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

§ 1292. Definitions

As used in this subchapter—

(1) The term "construction" means any one or more of the following: preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, field testing of innovative or alternative waste water treatment processes and techniques meeting guidelines promulgated under section 1314(d)(3) of this title, or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items.

(2)(A) The term "treatment works" means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 1281 of this title, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process (including land used for the storage of treated wastewater in land treat-

ment systems prior to land application) or is used for ultimate disposal of residues resulting from such treatment.

(B) In addition to the definition contained in subparagraph (A) of this paragraph, "treatment works" means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems. Any application for construction grants which includes wholly or in part such methods or systems shall, in accordance with guidelines published by the Administrator pursuant to subparagraph (C) of this paragraph, contain adequate data and analysis demonstrating such proposal to be, over the life of such works, the most cost efficient alternative to comply with sections 1311 or 1312 of this title, or the requirements of section 1281 of this title.

(C) For the purposes of subparagraph (B) of this paragraph, the Administrator shall, within one hundred and eighty days after October 18, 1972, publish and thereafter revise no less often than annually, guidelines for the evaluation of methods, including cost-effective analysis, described in subparagraph (B) of this paragraph.

(3) The term "replacement" as used in this subchapter means those expenditures for obtaining and installing equipment, accessories, or appurtenances during the useful life of the treatment works necessary to maintain the capacity and performance for which such works are designed and constructed.

(June 30, 1948, ch. 758, title II, § 212, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 844, and amended Dec. 27, 1977, Pub. L. 95-217, § 37, 91 Stat. 1581; Dec. 29, 1981, Pub. L. 97-117, § 2(d), 95 Stat. 1623.)

AMENDMENTS

1981—Par. (1), Pub. L. 97-117 inserted "field testing of innovative or alternative waste water treatment processes and techniques meeting guidelines promulgated under section 1314(d)(3) of this title," following "procedures".

1977—Par. (2)(A), Pub. L. 95-217 added "(including land used for the storage of treated wastewater in land treatment systems prior to land application)" following "integral part of the treatment process".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1281, 1285, 1317, 1342, 1345, 1378 of this title.

§ 1293. Loan guarantees

(a) State or local obligations issued exclusively to Federal Financing Bank for publicly owned treatment works; determination of eligibility of project by Administrator.

Subject to the conditions of this section and to such terms and conditions as the Administrator determines to be necessary to carry out the purposes of this subchapter, the Administrator is authorized to guarantee, and to make commitments to guarantee, the principal and interest (including interest accruing between the date of default and the date of the payment in full of the guarantee) of any loan, obligation, or

participation therein of any State, municipality, or intermunicipal or interstate agency issued directly and exclusively to the Federal Financing Bank to finance that part of the cost of any grant-eligible project for the construction of publicly owned treatment works not paid for with Federal financial assistance under this subchapter (other than this section), which project the Administrator has determined to be eligible for such financial assistance under this subchapter, including, but not limited to, projects eligible for reimbursement under section 1286 of this title.

(b) **Conditions for issuance**

No guarantee, or commitment to make a guarantee, may be made pursuant to this section—

(1) unless the Administrator certifies that the issuing body is unable to obtain on reasonable terms sufficient credit to finance its actual needs without such guarantee; and

(2) unless the Administrator determines that there is a reasonable assurance of repayment of the loan, obligation, or participation therein.

A determination of whether financing is available at reasonable rates shall be made by the Secretary of the Treasury with relationship to the current average yield on outstanding marketable obligations of municipalities of comparable maturity.

(c) **Fees for application investigation and issuance of commitment guarantee**

The Administrator is authorized to charge reasonable fees for the investigation of an application for a guarantee and for the issuance of a commitment to make a guarantee.

(d) **Commitment for repayment**

The Administrator, in determining whether there is a reasonable assurance of repayment, may require a commitment which would apply to such repayment. Such commitment may include, but not be limited to, any funds received by such grantee from the amounts appropriated under section 1286 of this title.

(June 30, 1948, ch. 758, title II, § 213, as added Oct. 19, 1976, Pub. L. 94-558, 90 Stat. 2839, and amended Pub. L. 96-483, § 2(e), Oct. 21, 1980, 94 Stat. 2361.)

AMENDMENTS

1980—Subsec. (d). Pub. L. 96-483 struck out "(1) all or any portion of the funds retained by such grantee under section 1284(b)(3) of this title, and (2)", following "limited to".

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-483 effective Dec. 27, 1977, see section 2(g) of Pub. L. 96-483, set out as a note under section 1281 of this title.

§ 1293a. **Contained spoil disposal facilities**

(a) **Construction, operation, and maintenance; period; conditions; requirements**

The Secretary of the Army, acting through the Chief of Engineers, is authorized to construct, operate, and maintain, subject to the provisions of subsection (c) of this section, con-

tained spoil disposal facilities of sufficient capacity for a period not to exceed ten years, to meet the requirements of this section. Before establishing each such facility, the Secretary of the Army shall obtain the concurrence of appropriate local governments and shall consider the views and recommendations of the Administrator of the Environmental Protection Agency and shall comply with requirements of section 1171 of this title, and of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). Section 401 of this title shall not apply to any facility authorized by this section.

(b) **Time for establishment; consideration of area needs; requirements**

The Secretary of the Army, acting through the Chief of Engineers, shall establish the contained spoil disposal facilities authorized in subsection (a) of this section at the earliest practicable date, taking into consideration the views and recommendations of the Administrator of the Environmental Protection Agency as to those areas which, in the Administrator's judgment, are most urgently in need of such facilities and pursuant to the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

(c) **Written agreement requirement; terms of agreement**

Prior to construction of any such facility, the appropriate State or States, interstate agency, municipality, or other appropriate political subdivision of the State shall agree in writing to (1) furnish all lands, easements, and rights-of-way necessary for the construction, operation, and maintenance of the facility; (2) contribute to the United States 25 per centum of the construction costs, such amount to be payable either in cash prior to construction, in installments during construction, or in installments, with interest at a rate to be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction is initiated, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations, which are neither due or callable for redemption for fifteen years from date of issue; (3) hold and save the United States free from damages due to construction, operation, and maintenance of the facility; and (4) except as provided in subsection (f) of this section, maintain the facility after completion of its use for disposal purposes in a manner satisfactory to the Secretary of the Army.

(d) **Waiver of construction costs contribution from non-Federal interests; findings of participation in waste treatment facilities for general geographical area and compliance with water quality standards; waiver of payments in event of written agreement before occurrence of findings**

The requirement for appropriate non-Federal interest or interests to furnish an agreement to contribute 25 per centum of the construction costs as set forth in subsection (c) of this section shall be waived by the Secretary of the Army upon a finding by the Administrator of

the Environmental Protection Agency that for the area to which such construction applies, the State or States involved, interstate agency, municipality, and other appropriate political subdivision of the State and industrial concerns are participating in and in compliance with an approved plan for the general geographical area of the dredging activity for construction, modification, expansion, or rehabilitation of waste treatment facilities and the Administrator has found that applicable water quality standards are not being violated. In the event such findings occur after the appropriate non-Federal interest or interests have entered into the agreement required by subsection (c) of this section, any payments due after the date of such findings as part of the required local contribution of 25 per centum of the construction costs shall be waived by the Secretary of the Army.

(e) Federal payment of costs for disposal of dredged spoil from project

Notwithstanding any other provision of law, all costs of disposal of dredged spoil from the project for the Great Lakes connecting channels, Michigan, shall be borne by the United States.

(f) Title to lands; easements, and rights-of-way; retention by non-Federal interests; conveyance of facilities; agreement of transferee

The participating non-Federal interest or interests shall retain title to all lands, easements, and rights-of-way furnished by it pursuant to subsection (c) of this section. A spoil disposal facility owned by a non-Federal interest or interests may be conveyed to another party only after completion of the facility's use for disposal purposes and after the transferee agrees in writing to use or maintain the facility in a manner which the Secretary of the Army determines to be satisfactory.

(g) Federal licenses or permits; charges; remission of charge

Any spoil disposal facilities constructed under the provisions of this section shall be made available to Federal licensees or permittees upon payment of an appropriate charge for such use. Twenty-five per centum of such charge shall be remitted to the participating non-Federal interest or interests except for those excused from contributing to the construction costs under subsections (d) and (e) of this section.

(h) Provisions applicable to Great Lakes and their connecting channels

This section, other than subsection (i), shall be applicable only to the Great Lakes and their connecting channels.

(i) Research, study, and experimentation program relating to dredged spoil extended to navigable waters, etc.; cooperative program; scope of program; utilization of facilities and personnel of Federal agency

The Chief of Engineers, under the direction of the Secretary of the Army, is hereby authorized to extend to all navigable waters, connecting channels, tributary streams, other waters of the United States and waters contiguous to the

United States, a comprehensive program of research, study, and experimentation relating to dredged spoil. This program shall be carried out in cooperation with other Federal and State agencies, and shall include, but not be limited to, investigations on the characteristics of dredged spoil, and alternative methods of its disposal. To the extent that such study shall include the effects of such dredge spoil on water quality, the facilities and personnel of the Environmental Protection Agency shall be utilized.

(Pub. L. 91-611, title I, § 123, Dec. 31, 1970, 84 Stat. 1823; Pub. L. 93-251, title I, § 23, Mar. 7, 1974, 88 Stat. 20.)

REFERENCES IN TEXT

Section 1171 of this title, referred to in subsec. (a), was omitted as superseded.

The National Environmental Policy Act of 1969, referred to in subsecs. (a) and (b), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 56 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (b), is act June 30, 1948, ch. 788, as amended generally by Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 818, which is classified generally to chapter 26 (§ 1251 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of this title and Tables.

CODIFICATION

Section was formerly classified to section 1166a of this title.

Section was not enacted as a part of the Federal Water Pollution Control Act which comprises this chapter.

AMENDMENTS

1974—Subsec. (d). Pub. L. 93-251 added provision for waiver of payments in event of a written agreement before occurrence of findings.

§ 1294. Public information and education on recycling and reuse of wastewater, use of land treatment, and reduction of wastewater volume

The Administrator shall develop and operate within one year of December 27, 1977, a continuing program of public information and education on recycling and reuse of wastewater (including sludge), the use of land treatment, and methods for the reduction of wastewater volume.

(June 30, 1948, ch. 758, title II, § 214, as added Dec. 27, 1977, Pub. L. 95-217, § 38, 91 Stat. 1581.)

§ 1295. Requirements for American materials

Notwithstanding any other provision of law, no grant for which application is made after February 1, 1978, shall be made under this subchapter for any treatment works unless only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States, substantially all from articles, materials, or supplies

mined, produced, or manufactured, as the case may be, in the United States will be used in such treatment works. This section shall not apply in any case where the Administrator determines, based upon those factors the Administrator deems relevant, including the available resources of the agency, it to be inconsistent with the public interest (including multilateral government procurement agreements) or the cost to be unreasonable, or if articles, materials, or supplies of the class or kind to be used or the articles, materials, or supplies from which they are manufactured are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(June 30, 1948, ch. 758, title II, § 215, as added Dec. 27, 1977, Pub. L. 95-217, § 39, 91 Stat. 1581.)

§ 1294. Determination of priority of projects

Notwithstanding any other provision of this chapter, the determination of the priority to be given each category of projects for construction of publicly owned treatment works within each State shall be made solely by that State, except that if the Administrator, after a public hearing, determines that a specific project will not result in compliance with the enforceable requirements of this chapter, such project shall be removed from the State's priority list and such State shall submit a revised priority list. These categories shall include, but not be limited to (A) secondary treatment, (B) more stringent treatment, (C) infiltration-in-flow correction, (D) major sewer system rehabilitation, (E) new collector sewer and appurtenances, (F) new interceptors and appurtenances, and (G) correction of combined sewer overflows. Not less than 25 per centum of funds allocated to a State in any fiscal year under this subchapter for construction of publicly owned treatment works in such State shall be obligated for those types of projects referred to in clauses (D), (E), (F), and (G) of this section, if such projects are on such State's priority list for that year and are otherwise eligible for funding in that fiscal year. It is the policy of Congress that projects for wastewater treatment and management undertaken with Federal financial assistance under this chapter by any State, municipality, or intermunicipal or interstate agency shall be projects which, in the estimation of the State, are designed to achieve optimum water quality management, consistent with the public health and water quality goals and requirements of this chapter.

(June 30, 1948, ch. 758, title II, § 216, as added Dec. 27, 1977, Pub. L. 95-217, § 40, 91 Stat. 1582, and amended Dec. 29, 1981, Pub. L. 97-117, § 16, 95 Stat. 1630.)

AMENDMENTS

1981—Pub. L. 97-117 inserted provision that it is the policy of Congress that projects for wastewater treatment and management undertaken with Federal financial assistance under this chapter by any State, municipality, or intermunicipal or interstate agency be projects which, in the estimation of the State, are de-

signed to achieve optimum water quality management, consistent with the public health and water quality goals and requirements of this chapter.

§ 1297. Guidelines for cost-effectiveness analysis

Any guidelines for cost-effectiveness analysis published by the Administrator under this subchapter shall provide for the identification and selection of cost effective alternatives to comply with the objectives and goals of this chapter and sections 1281(b), 1281(d), 1281(g)(2)(A), and 1311(b)(2)(B) of this title.

(June 30, 1948, ch. 758, title II, § 217, as added Dec. 27, 1977, Pub. L. 95-217, § 41, 91 Stat. 1582.)

§ 1298. Cost effectiveness

(a) Congressional statement of policy

It is the policy of Congress that a project for waste treatment and management undertaken with Federal financial assistance under this chapter by any State, municipality, or intermunicipal or interstate agency shall be considered as an overall waste treatment system for waste treatment and management, and shall be that system which constitutes the most economical and cost-effective combination of devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 1281 of this title, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping power, and other equipment, and their appurtenances; extension, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process (including land use for the storage of treated wastewater in land treatment systems prior to land application) or which is used for ultimate disposal of residues resulting from such treatment; water efficiency measures and devices; and any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems; to meet the requirements of this chapter.

(b) Determination by Administrator as prerequisite to approval of grant

In accordance with the policy set forth in subsection (a) of this section, before the Administrator approves any grant to any State, municipality, or intermunicipal or interstate agency for the erection, building, acquisition, alteration, remodeling, improvement, or extension of any treatment works the Administrator shall determine that the facilities plan of which such treatment works are a part constitutes the most economical and cost-effective combination of treatment works over the life of the project to meet the requirements of this chapter, in-

cluding, but not limited to, consideration of construction costs, operation, maintenance, and replacement costs.

(c) Value engineering review

In furtherance of the policy set forth in subsection (a) of this section, the Administrator shall require value engineering review in connection with any treatment works, prior to approval of any grant for the erection, building, acquisition, alteration, remodeling, improvement, or extension of such treatment works, in any case in which the cost of such erection, building, acquisition, alteration, remodeling, improvement, or extension is projected to be in excess of \$10,000,000. For purposes of this subsection, the term "value engineering review" means a specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high cost in a project in order to arrive at a cost saving without sacrificing the reliability or efficiency of the project.

(d) Projects affected

This section applies to projects for waste treatment and management for which no treatment works including a facilities plan for such project have received Federal financial assistance for the preparation of construction plans and specifications under this chapter before December 29, 1981.

(June 30, 1948, ch. 758, title II, § 218, as added Dec. 29, 1981, Pub. L. 97-117, § 19, 95 Stat. 1630.)

§ 1299. State certification of projects

Whenever the Governor of a State which has been delegated sufficient authority to administer the construction grant program under this subchapter in that State certifies to the Administrator that a grant application meets applicable requirements of Federal and State law for assistance under this subchapter, the Administrator shall approve or disapprove such application within 45 days of the date of receipt of such application. If the Administrator does not approve or disapprove such application within 45 days of receipt, the application shall be deemed approved. If the Administrator disapproves such application the Administrator shall state in writing the reasons for such disapproval. Any grant approved or deemed approved under this section shall be subject to amounts provided in appropriation Acts.

(June 30, 1948, ch. 758, title II, § 219, as added Dec. 29, 1981, Pub. L. 97-117, § 20, 95 Stat. 1631.)

SUBCHAPTER III—STANDARDS AND ENFORCEMENT

§ 1311. Effluent limitations

(a) Illegality of pollutant discharges except in compliance with law

Except as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342, and 1344 of this title, the discharge of any pollutant by any person shall be unlawful.

(b) Timetable for achievement of objectives

In order to carry out the objective of this chapter there shall be achieved—

(1)(A) not later than July 1, 1977, effluent limitations for point sources, other than publicly owned treatment works, (i) which shall require the application of the best practicable control technology currently available as defined by the Administrator pursuant to section 1314(b) of this title, or (ii) in the case of a discharge into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, which shall require compliance with any applicable pretreatment requirements and any requirements under section 1317 of this title; and

(B) for publicly owned treatment works in existence on July 1, 1977, or approved pursuant to section 1283 of this title prior to June 30, 1974 (for which construction must be completed within four years of approval), effluent limitations based upon secondary treatment as defined by the Administrator pursuant to section 1314(d)(1) of this title; or,

(C) not later than July 1, 1977, any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulations (under authority preserved by section 1370 of this title) or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to this chapter.

(2)(A) for pollutants identified in subparagraphs (C), (D), and (F) of this paragraph, effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which (i) shall require application of the best available technology economically achievable for such category or class, which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(2) of this title, which such effluent limitations shall require the elimination of discharges of all pollutants if the Administrator finds, on the basis of information available to him (including information developed pursuant to section 1325 of this title), that such elimination is technologically and economically achievable for a category or class of point sources as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(2) of this title, or (ii) in the case of the introduction of a pollutant into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, shall require compliance with any applicable pretreatment requirements and any other requirement under section 1317 of this title;

(B) Repealed. Pub. L. 97-117, § 21(b), Dec. 29, 1981, 95 Stat. 1632.

(C) not later than July 1, 1984, with respect to all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transporta-

tion of the House of Representatives compliance with effluent limitations in accordance with subparagraph (A) of this paragraph;

(D) for all toxic pollutants listed under paragraph (1) of subsection (a) of section 1317 of this title which are not referred to in subparagraph (C) of this paragraph compliance with effluent limitations in accordance with subparagraph (A) of this paragraph not later than three years after the date such limitations are established;

(E) not later than July 1, 1984, effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which in the case of pollutants identified pursuant to section 1314(a)(4) of this title shall require application of the best conventional pollutant control technology as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(4) of this title; and

(F) for all pollutants (other than those subject to subparagraphs (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph not later than 3 years after the date such limitations are established, or not later than July 1, 1984, whichever is later, but in no case later than July 1, 1987.

(c) **Modification of timetable**

The Administrator may modify the requirements of subsection (b)(2)(A) of this section with respect to any point source for which a permit application is filed after July 1, 1977, upon a showing by the owner or operator of such point source satisfactory to the Administrator that such modified requirements (1) will represent the maximum use of technology within the economic capability of the owner or operator; and (2) will result in reasonable further progress toward the elimination of the discharge of pollutants.

(d) **Review and revision of effluent limitations**

Any effluent limitation required by paragraph (2) of subsection (b) of this section shall be reviewed at least every five years and, if appropriate, revised pursuant to the procedure established under such paragraph.

(e) **All point discharge source application of effluent limitations**

Effluent limitations established pursuant to this section or section 1312 of this title shall be applied to all point sources of discharge of pollutants in accordance with the provisions of this chapter.

(f) **Illegality of discharge of radiological, chemical, or biological warfare agents or high-level radioactive waste**

Notwithstanding any other provisions of this chapter it shall be unlawful to discharge any radiological, chemical, or biological warfare agent or high-level radioactive waste into the navigable waters.

(g) **Waiver for certain pollutants**

(1) The Administrator, with the concurrence of the State, shall modify the requirements of subsection (b)(2)(A) of this section with respect to the discharge of any pollutant (other than

pollutants identified pursuant to section 1314(a)(4) of this title, toxic pollutants subject to section 1317(a) of this title, and the thermal component of discharges) from any point source upon a showing by the owner or operator of such point source satisfactory to the Administrator that—

(A) such modified requirements will result at a minimum in compliance with the requirements of subsection (b)(1)(A) or (C) of this section, whichever is applicable;

(B) such modified requirements will not result in any additional requirements on any other point or nonpoint source; and

(C) such modification will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water and such modification will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity or teratogenicity), or synergistic propensities.

(2) If an owner or operator of a point source applies for a modification under this subsection with respect to the discharge of any pollutant, such owner or operator shall be eligible to apply for modification under subsection (c) of this section with respect to such pollutant only during the same time period as he is eligible to apply for a modification under this subsection.

(h) **Modification of secondary treatment requirements**

The Administrator, with the concurrence of the State, may issue a permit under section 1342 of this title which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from a publicly owned treatment works into marine waters, if the applicant demonstrates to the satisfaction of the Administrator that—

(1) there is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 1314(a)(6) of this title;

(2) such modified requirements will not interfere with the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water;

(3) the applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable;

(4) such modified requirements will not result in any additional requirements on any other point or nonpoint source;

(5) all applicable pretreatment requirements for sources introducing waste into such treatment works will be enforced;

(6) to the extent practicable, the applicant has established a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into such treatment works;

(7) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit.

For the purposes of this subsection the phrase "the discharge of any pollutant into marine waters" refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement and other hydrological and geological characteristics which the Administrator determines necessary to allow compliance with paragraph (2) of this subsection, and section 1251(a)(2) of this title. A municipality which applies secondary treatment shall be eligible to receive a permit pursuant to this subsection which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from any treatment works owned by such municipality into marine waters. No permit issued under this subsection shall authorize the discharge of sewage sludge into marine waters.

(i) Municipal time extensions

(1) Where construction is required in order for a planned or existing publicly owned treatment works to achieve limitations under subsection (b)(1)(B) or (b)(1)(C) of this section, but (A) construction cannot be completed within the time required in such subsection, or (B) the United States has failed to make financial assistance under this chapter available in time to achieve such limitations by the time specified in such subsection, the owner or operator of such treatment works may request the Administrator (or if appropriate the State) to issue a permit pursuant to section 1342 of this title or to modify a permit issued pursuant to that section to extend such time for compliance. Any such request shall be filed with the Administrator (or if appropriate the State) within 180 days after December 27, 1977. The Administrator (or if appropriate the State) may grant such request and issue or modify such a permit, which shall contain a schedule of compliance for the publicly owned treatment works based on the earliest date by which such financial assistance will be available from the United States and construction can be completed, but in no event later than July 1, 1988, and shall contain such other terms and conditions, including those necessary to carry out subsections (b) through (g) of section 1281 of this title, section 1317 of this title, and such interim effluent limitations applicable to that treatment works as the Administrator determines are necessary to carry out the provisions of this chapter.

(2)(A) Where a point source (other than a publicly owned treatment works) will not achieve the requirements of subsections (b)(1)(A) and (b)(1)(C) of this section and--

(i) if a permit issued prior to July 1, 1977, to such point source is based upon a discharge into a publicly owned treatment works; or

(ii) if such point source (other than a publicly owned treatment works) had before July 1, 1977, a contract (enforceable against such point source) to discharge into a publicly owned treatment works; or

(iii) if either an application made before July 1, 1977, for a construction grant under this chapter for a publicly owned treatment works, or engineering or architectural plans or working drawings made before July 1, 1977, for a publicly owned treatment works, show that such point source was to discharge into such publicly owned treatment works,

and such publicly owned treatment works is presently unable to accept such discharge without construction, and in the case of a discharge to an existing publicly owned treatment works, such treatment works has an extension pursuant to paragraph (1) of this subsection, the owner or operator of such point source may request the Administrator (or if appropriate the State) to issue or modify such a permit pursuant to such section 1342 of this title to extend such time for compliance. Any such request shall be filed with the Administrator (or if appropriate the State) within 180 days after December 27, 1977, or the filing of a request by the appropriate publicly owned treatment works under paragraph (1) of this subsection, whichever is later. If the Administrator (or if appropriate the State) finds that the owner or operator of such point source has acted in good faith, he may grant such request and issue or modify such a permit, which shall contain a schedule of compliance for the point source to achieve the requirements of subsections (b)(1)(A) and (C) of this section and shall contain such other terms and conditions, including pretreatment and interim effluent limitations and water conservation requirements applicable to that point source, as the Administrator determines are necessary to carry out the provisions of this chapter.

(B) No time modification granted by the Administrator (or if appropriate the State) pursuant to paragraph (2)(A) of this subsection shall extend beyond the earliest date practicable for compliance or beyond the date of any extension granted to the appropriate publicly owned treatment works pursuant to paragraph (1) of this subsection, but in no event shall it extend beyond July 1, 1988; and no such time modification shall be granted unless (i) the publicly owned treatment works will be in operation and available to the point source before July 1, 1988, and will meet the requirements of subsections (b)(1)(B) and (C) of this section after receiving the discharge from that point source; and (ii) the point source and the publicly owned treatment works have entered into an enforceable contract requiring the point source to discharge into the publicly owned treatment works, the owner or operator of such point source to pay the costs required under section 1284 of this title, and the publicly owned treatment works to accept the discharge from the point source; and (iii) the permit for such point

source requires that point source to meet all requirements under section 1317(a) and (b) of this title during the period of such time modification.

(j) Modification procedures

(1) Any application filed under this section for a modification of the provisions of—

(A) subsection (b)(1)(B) of this section under subsection (h) of this section shall be filed not later than the 365th day which begins after December 29, 1981.

(B) subsection (b)(2)(A) of this section as it applies to pollutants identified in subsection (b)(2)(F) of this section shall be filed not later than 270 days after the date of promulgation of an applicable effluent guideline under section 1314 of this title or not later than 270 days after December 27, 1977, whichever is later.

(2) Any application for a modification filed under subsection (g) of this section shall not operate to stay any requirement under this chapter, unless in the judgment of the Administrator such a stay or the modification sought will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity, or teratogenicity), or synergistic propensities, and that there is a substantial likelihood that the applicant will succeed on the merits of such application. In the case of an application filed under subsection (g) of this section, the Administrator may condition any stay granted under this paragraph on requiring the filing of a bond or other appropriate security to assure timely compliance with the requirements from which a modification is sought.

(k) Innovative technology

In the case of any facility subject to a permit under section 1342 of this title which proposes to comply with the requirements of subsection (b)(2)(A) of this section by replacing existing production capacity with an innovative production process which will result in an effluent reduction significantly greater than that required by the limitation otherwise applicable to such facility and moves toward the national goal of eliminating the discharge of all pollutants, or with the installation of an innovative control technique that has a substantial likelihood for enabling the facility to comply with the applicable effluent limitation by achieving a significantly greater effluent reduction than that required by the applicable effluent limitation and moves toward the national goal of eliminating the discharge of all pollutants, or by achieving the required reduction with an innovative system that has the potential for significantly lower costs than the systems which have been determined by the Administrator to be economically achievable, the Administrator (or the State with an approved program under section 1342 of this title, in consultation with the Ad-

ministrator) may establish a date for compliance under subsection (b)(2)(A) of this section no later than July 1, 1987, if it is also determined that such innovative system has the potential for industrywide application.

(l) Toxic pollutants

The Administrator may not modify any requirement of this section as it applies to any specific pollutant which is on the toxic pollutant list under section 1317(a)(1) of this title.

(m) Modification of effluent limitation requirements for point sources

(1) The Administrator, with the concurrence of the State, may issue a permit under section 1342 of this title which modifies the requirements of subsections (b)(1)(A) and (b)(2)(E) of this section, and of section 1343 of this title, with respect to effluent limitations to the extent such limitations relate to biochemical oxygen demand and pH from discharges by an industrial discharger in such State into deep waters of the territorial seas, if the applicant demonstrates and the Administrator finds that—

(A) the facility for which modification is sought is covered at the time of the enactment of this subsection by National Pollutant Discharge Elimination System permit number CA0005884 or CA0005282;

(B) the energy and environmental costs of meeting such requirements of subsections (b)(1)(A) and (b)(2)(E) of this section and section 1343 of this title exceed by an unreasonable amount the benefits to be obtained, including the objectives of this chapter;

(C) the applicant has established a system for monitoring the impact of such discharges on a representative sample of aquatic biota;

(D) such modified requirements will not result in any additional requirements on any other point or nonpoint source;

(E) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit;

(F) the discharge is into waters where there is strong tidal movement and other hydrological and geological characteristics which are necessary to allow compliance with this subsection and section 1251(a)(2) of this title;

(G) the applicant accepts as a condition to the permit a contractual obligation to use funds in the amount required (but not less than \$250,000 per year for ten years) for research and development of water pollution control technology, including but not limited to closed cycle technology;

(H) the facts and circumstances present a unique situation which, if relief is granted, will not establish a precedent or the relaxation of the requirements of this chapter applicable to similarly situated discharges; and

(I) no owner or operator of a facility comparable to that of the applicant situated in the United States has demonstrated that it would be put at a competitive disadvantage to the applicant (or the parent company or any sub-

¹ So in original. Probably should be "than".

sidary thereof) as a result of the issuance of a permit under this subsection.

(2) The effluent limitations established under a permit issued under paragraph (1) shall be sufficient to implement the applicable State water quality standards, to assure the protection of public water supplies and protection and propagation of a balanced, indigenous population of shellfish, fish, fauna, wildlife, and other aquatic organisms, and to allow recreational activities in and on the water. In setting such limitations, the Administrator shall take into account any seasonal variations and the need for an adequate margin of safety, considering the lack of essential knowledge concerning the relationship between effluent limitations and water quality and the lack of essential knowledge of the effects of discharges on beneficial uses of the receiving waters.

(3) A permit under this subsection may be issued for a period not to exceed five years, and such a permit may be renewed for one additional period not to exceed five years upon a demonstration by the applicant and a finding by the Administrator at the time of application for any such renewal that the provisions of this subsection are met.

(4) The Administrator may terminate a permit issued under this subsection if the Administrator determines that there has been a decline in ambient water quality of the receiving waters during the period of the permit even if a direct cause and effect relationship cannot be shown: *Provided*, That if the effluent from a source with a permit issued under this subsection is contributing to a decline in ambient water quality of the receiving waters, the Administrator shall terminate such permit.

(June 30, 1948, ch. 758, title III, § 301, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 844, and amended Dec. 27, 1977, Pub. L. 95-217, §§ 42-47, 53(c), 91 Stat. 1582-1586, 1590; Dec. 29, 1981, Pub. L. 97-117, §§ 21, 22(a)-(d), 95 Stat. 1631, 1632; Jan. 8, 1983, Pub. L. 97-440, 96 Stat. 2289.)

AMENDMENTS

1983—Subsec. (m), Pub. L. 97-440 added subsec. (m).
1981—Subsec. (b)(2)(B), Pub. L. 97-117, § 21(b), struck out subpar. (B), which required that, not later than July 1, 1983, compliance by all publicly owned treatment works with the requirements in section 1281(b)(2)(A) of this title be achieved.

Subsec. (h), Pub. L. 97-117, § 22(a) to (c), struck out in provision preceding par. (1) "in an existing discharge" following "discharge of any pollutant", struck out par. (8), which required the applicant to demonstrate to the satisfaction of the Administrator that any funds available to the owner of such treatment works under subchapter II of this chapter be used to achieve the degree of effluent reduction required by section 1281(b) and (b)(2)(A) of this title or to carry out the requirements of this subsection, and inserted in provision following par. (7) a further provision that a municipality which applies secondary treatment be eligible to receive a permit which modifies the requirements of subsec. (b)(1)(B) of this section with respect to the discharge of any pollutant from any treatment works owned by such municipality into marine waters and that no permit issued under this subsection authorize the discharge of sewage sludge into marine waters.

Subsec. (k)(1), (2)(B), Pub. L. 97-117, § 21(a), substituted "July 1, 1983," for "July 1, 1982," wherever ap-

pearing. Par. (2)(B) contained a reference to "July 1, 1983;" which was changed to "July 1, 1982;" as the probable intent of Congress in that reference to July 1, 1982, was to the outside date for compliance for a point source other than a publicly owned treatment works and subpar. (B) allows a time extension for such a point source up to the date granted in an extension for a publicly owned treatment works, which date was extended to July 1, 1982, by Pub. L. 97-117.

Subsec. (j)(1)(A), Pub. L. 97-117, § 22(d), substituted "that the 365th day which begins after December 29, 1981" for "than 270 days after December 27, 1977".

1977—Subsec. (b)(2)(A), Pub. L. 95-217, § 42(b), substituted "for pollutants identified in subparagraphs (C), (D), and (F) of this paragraph" for "not later than July 1, 1983".

Subsec. (b)(2)(C) to (F), Pub. L. 95-217, § 42(a), added subpar. (C) to (F).

Subsec. (c), Pub. L. 95-217, § 43, added subsec. (c).

Subsec. (h), Pub. L. 95-217, § 44, added subsec. (h).

Subsec. (i), Pub. L. 95-217, § 45, added subsec. (i).

Subsec. (j), Pub. L. 95-217, § 46, added subsec. (j).

Subsec. (k), Pub. L. 95-217, § 47, added subsec. (k).

Subsec. (l), Pub. L. 95-217, § 53(c), added subsec. (l).

EFFECTIVE DATE OF 1981 AMENDMENT

Section 22(c) of Pub. L. 97-117 provided that: "The amendments made by this section (amending subsec. (h) and (j)(1)(A) of this section) shall take effect on the date of enactment of this Act (Dec. 29, 1981), except that no applicant, other than the city of Avalon, California, who applies after the date of enactment of this Act for a permit pursuant to subsection (h) of section 301 of the Federal Water Pollution Control Act (subsec. (h) of this section) which modifies the requirements of subsection (b)(1)(B) of section 301 of such Act (subsec. (b)(1)(B) of this section) shall receive such permit during the one-year period which begins on the date of enactment of this Act."

CERTAIN MUNICIPAL COMPLIANCE DEADLINES UNAFFECTED; EXCEPTION

Section 21(a) of Pub. L. 97-117 provided in part that: "The amendment made by this subsection (amending subsec. (k)(1) and (2)(B) of this section) shall not be interpreted or applied to extend the date for compliance with section 301(b)(1)(B) or (C) of the Federal Water Pollution Control Act (subsec. (b)(1)(B) or (C) of this section) beyond schedules for compliance in effect as of the date of enactment of this Act (Dec. 29, 1981), except in cases where reductions in the amount of financial assistance under this Act (Pub. L. 97-117, see Short Title of 1981 Amendment note set out under section 1281 of this title) or changed conditions affecting the rate of construction beyond the control of the owner or operator will make it impossible to complete construction by July 1, 1983."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1286, 1292, 1297, 1312, 1313, 1314, 1317, 1319, 1325, 1328, 1341, 1342, 1344, 1368, 1367, 1369 of this title.

§ 1312. Water quality related effluent limitations

(a) Establishment

Whenever, in the judgment of the Administrator, discharges of pollutants from a point source or group of point sources, with the application of effluent limitations required under section 1311(b)(2) of this title, would interfere with the attainment or maintenance of that water quality in a specific portion of the navigable waters which shall assure protection of public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wild-

life, and allow recreational activities in and on the water, effluent limitations (including alternative effluent control strategies) for such point source or sources shall be established which can reasonably be expected to contribute to the attainment or maintenance of such water quality.

(b) Notice; hearing; adjustment of limitation by Administrator

(1) Prior to establishment of any effluent limitation pursuant to subsection (a) of this section, the Administrator shall issue notice of intent to establish such limitation and within ninety days of such notice hold a public hearing to determine the relationship of the economic and social costs of achieving any such limitation or limitations, including any economic or social dislocation in the affected community or communities, to the social and economic benefits to be obtained (including the attainment of the objective of this chapter) and to determine whether or not such effluent limitations can be implemented with available technology or other alternative control strategies.

(2) If a person affected by such limitation demonstrates at such hearing that (whether or not such technology or other alternative control strategies are available) there is no reasonable relationship between the economic and social costs and the benefits to be obtained (including attainment of the objective of this chapter), such limitation shall not become effective and the Administrator shall adjust such limitation as it applies to such person.

(c) Delay in application of other limitations

The establishment of effluent limitations under this section shall not operate to delay the application of any effluent limitation established under section 1311 of this title.

(June 30, 1948, ch. 758, title III, § 303, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 846.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1292, 1311, 1313, 1314, 1319, 1341, 1343, 1368, 1397, 1399 of this title.

§ 1313. Water quality standards and implementation plans

(a) Existing water quality standards

(1) In order to carry out the purpose of this chapter, any water quality standard applicable to interstate waters which was adopted by any State and submitted to, and approved by, or is a waiting approval by, the Administrator pursuant to this Act as in effect immediately prior to October 18, 1972, shall remain in effect unless the Administrator determined that such standard is not consistent with the applicable requirements of this Act as in effect immediately prior to October 18, 1972. If the Administrator makes such a determination he shall, within three months after October 18, 1972, notify the State and specify the changes needed to meet such requirements. If such changes are not adopted by the State within ninety days after the date of such notification, the Administrator shall promulgate such changes in accordance with subsection (b) of this section.

(2) Any State which, before October 18, 1972, has adopted, pursuant to its own law, water quality standards applicable to intrastate waters shall submit such standards to the Administrator within thirty days after October 18, 1972. Each such standard shall remain in effect, in the same manner and to the same extent as any other water quality standard established under this chapter unless the Administrator determines that such standard is inconsistent with the applicable requirements of this Act as in effect immediately prior to October 18, 1972. If the Administrator makes such a determination he shall not later than the one hundred and twentieth day after the date of submission of such standards, notify the State and specify the changes needed to meet such requirements. If such changes are not adopted by the State within ninety days after such notification, the Administrator shall promulgate such changes in accordance with subsection (b) of this section.

(3)(A) Any State which prior to October 18, 1972, has not adopted pursuant to its own laws water quality standards applicable to intrastate waters shall, not later than one hundred and eighty days after October 18, 1972, adopt and submit such standards to the Administrator.

(B) If the Administrator determines that any such standards are consistent with the applicable requirements of this Act as in effect immediately prior to October 18, 1972, he shall approve such standards.

(C) If the Administrator determines that any such standards are not consistent with the applicable requirements of this Act as in effect immediately prior to October 18, 1972, he shall, not later than the ninetieth day after the date of submission of such standards, notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standards pursuant to subsection (b) of this section.

(b) Proposed regulations

(1) The Administrator shall promptly prepare and publish proposed regulations setting forth water quality standards for a State in accordance with the applicable requirements of this Act as in effect immediately prior to October 18, 1972, if—

(A) the State fails to submit water quality standards within the times prescribed in subsection (a) of this section.

(B) a water quality standard submitted by such State under subsection (a) of this section is determined by the Administrator not to be consistent with the applicable requirements of subsection (a) of this section.

(2) The Administrator shall promulgate any water quality standard published in a proposed regulation not later than one hundred and ninety days after the date he publishes any such proposed standard, unless prior to such promulgation, such State has adopted a water quality standard which the Administrator determines to be in accordance with subsection (a) of this section.

(c) Review; revised standards; publication

(1) The Governor of a State or the State water pollution control agency of such State shall from time to time (but at least once each three year period beginning with October 18, 1972) hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. Results of such review shall be made available to the Administrator.

(2) Whenever the State revises or adopts a new standard, such revised or new standard shall be submitted to the Administrator. Such revised or new water quality standard shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses. Such standards shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this chapter. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation.

(3) If the Administrator, within sixty days after the date of submission of the revised or new standard, determines that such standard meets the requirements of this chapter, such standard shall thereafter be the water quality standard for the applicable waters of that State. If the Administrator determines that any such revised or new standard is not consistent with the applicable requirements of this chapter, he shall not later than the ninetieth day after the date of submission of such standard notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standard pursuant to paragraph (4) of this subsection.

(4) The Administrator shall promptly prepare and publish proposed regulations setting forth a revised or new water quality standard for the navigable waters involved—

(A) if a revised or new water quality standard submitted by such State under paragraph

(3) of this subsection for such waters is determined by the Administrator not to be consistent with the applicable requirements of this chapter, or

(B) in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of this chapter.

The Administrator shall promulgate any revised or new standard under this paragraph not later than ninety days after he publishes such proposed standards, unless prior to such promulgation, such State has adopted a revised or new water quality standard which the Administrator determines to be in accordance with this chapter.

(d) Identification of areas with insufficient controls; maximum daily load

(1)(A) Each State shall identify those waters within its boundaries for which the effluent limitations required by section 1311(b)(1)(A)

and section 1311(b)(1)(B) of this title are not stringent enough to implement any water quality standard applicable to such waters. The State shall establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters.

(B) Each State shall identify those waters or parts thereof within its boundaries for which controls on thermal discharges under section 1311 of this title are not stringent enough to assure protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife.

(C) Each State shall establish for the waters identified in paragraph (1)(A) of this subsection, and in accordance with the priority ranking, the total maximum daily load, for those pollutants which the Administrator identifies under section 1314(a)(2) of this title as suitable for such calculation. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.

(D) Each State shall estimate for the waters identified in paragraph (1)(B) of this subsection the total maximum daily thermal load required to assure protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife. Such estimates shall take into account the normal water temperatures, flow rates, seasonal variations, existing sources of heat input, and the dissipative capacity of the identified waters or parts thereof. Such estimates shall include a calculation of the maximum heat input that can be made into each such part and shall include a margin of safety which takes into account any lack of knowledge concerning the development of thermal water quality criteria for such protection and propagation in the identified waters or parts thereof.

(2) Each State shall submit to the Administrator from time to time, with the first such submission not later than one hundred and eighty days after the date of publication of the first identification of pollutants under section 1314(a)(2)(D) of this title, for his approval the waters identified and the loads established under paragraphs (1)(A), (1)(B), (1)(C), and (1)(D) of this subsection. The Administrator shall either approve or disapprove such identification and load not later than thirty days after the date of submission. If the Administrator approves such identification and load, such State shall incorporate them into its current plan under subsection (e) of this section. If the Administrator disapproves such identification and load, he shall not later than thirty days after the date of such disapproval identify such waters in such State and establish such loads for such waters as he determines necessary to implement the water quality standards applicable to such waters and upon such identification and establishment the State shall incorporate them into its current plan under subsection (e) of this section.

(3) For the specific purpose of developing information, each State shall identify all waters within its boundaries which it has not identified under paragraph (1)(A) and (1)(B) of this subsection and estimate for such waters the total maximum daily load with seasonal variations and margins of safety, for those pollutants which the Administrator identifies under section 1314(a)(2) of this title as suitable for such calculation and for thermal discharges, at a level that would assure protection and propagation of a balanced indigenous population of fish, shellfish, and wildlife.

(e) Continuing planning process

(1) Each State shall have a continuing planning process approved under paragraph (2) of this subsection which is consistent with this chapter.

(2) Each State shall submit not later than 120 days after October 18, 1972, to the Administrator for his approval a proposed continuing planning process which is consistent with this chapter. Not later than thirty days after the date of submission of such a process the Administrator shall either approve or disapprove such process. The Administrator shall from time to time review each State's approved planning process for the purpose of insuring that such planning process is at all times consistent with this chapter. The Administrator shall not approve any State permit program under subchapter IV of this chapter for any State which does not have an approved continuing planning process under this section.

(3) The Administrator shall approve any continuing planning process submitted to him under this section which will result in plans for all navigable waters within such State, which include, but are not limited to, the following:

(A) effluent limitations and schedules of compliance at least as stringent as those required by section 1311(b)(1), section 1311(b)(2), section 1316, and section 1317 of this title, and at least as stringent as any requirements contained in any applicable water quality standard in effect under authority of this section;

(B) the incorporation of all elements of any applicable area-wide waste management plans under section 1288 of this title, and applicable basin plans under section 1289 of this title;

(C) total maximum daily load for pollutants in accordance with subsection (d) of this section;

(D) procedures for revision;

(E) adequate authority for intergovernmental cooperation;

(F) adequate implementation, including schedules of compliance, for revised or new water quality standards, under subsection (c) of this section;

(G) controls over the disposition of all residual waste from any water treatment processing;

(H) an inventory and ranking, in order of priority, of needs for construction of waste treatment works required to meet the applicable requirements of sections 1311 and 1312 of this title.

(f) Earlier compliance

Nothing in this section shall be construed to affect any effluent limitation, or schedule of compliance required by any State to be implemented prior to the dates set forth in sections 1311(b)(1) and 1311(b)(2) of this title nor to preclude any State from requiring compliance with any effluent limitation or schedule of compliance at dates earlier than such dates.

(g) Heat standards

Water quality standards relating to heat shall be consistent with the requirements of section 1326 of this title.

(h) Thermal water quality standards

For the purposes of this chapter the term "water quality standards" includes thermal water quality standards.

(June 30, 1948, ch. 758, title III, § 303, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 846.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a)(1), (2), (3)(B), (C), (b)(1), means act June 30, 1948, ch. 758, 62 Stat. 1156, prior to the superseding and reenactment of act June 30, 1948 by act Oct. 18, 1972, Pub. L. 92-500, 86 Stat. 816. Act June 30, 1948, ch. 758, as added by act Oct. 18, 1972, Pub. L. 92-500, 86 Stat. 616, enacted this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1252, 1284, 1285, 1288, 1313a, 1314, 1326, 1341, 1375 of this title.

§ 1313a. Revised water quality standards

The review, revision, and adoption or promulgation of revised or new water quality standards pursuant to section 303(c) of the Federal Water Pollution Control Act (33 U.S.C. 1313(c)) shall be completed by the date three years after December 29, 1981. No grant shall be made under title II of the Federal Water Pollution Control Act (33 U.S.C. 1281 et seq.) after such date until water quality standards are reviewed and revised pursuant to section 303(c), except where the State has in good faith submitted such revised water quality standards and the Administrator has not acted to approve or disapprove such submission within one hundred and twenty days of receipt.

(Pub. L. 97-117, § 24, Dec. 29, 1981, 95 Stat. 1632.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in text, is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 816. Title II of the Federal Water Pollution Control Act is classified generally to subchapter II (§ 1281 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of this title and Tables.

CODIFICATION

Section was enacted as part of the Municipal Wastewater Treatment Construction Grant Amendments of 1981, and not as part of the Federal Water Pollution Control Act which comprises this chapter.

§ 1314. Information and guidelines

(a) Criteria development and publication

(1) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after October 18, 1972 (and from time to time thereafter revise) criteria for water quality accurately reflecting the latest scientific knowledge (A) on the kind and extent of all identifiable effects on health and welfare including, but not limited to, plankton, fish, shellfish, wildlife, plant life, shorelines, beaches, esthetics, and recreation which may be expected from the presence of pollutants in any body of water, including ground water; (B) on the concentration and dispersal of pollutants, or their byproducts, through biological, physical, and chemical processes; and (C) on the effects of pollutants on biological community diversity, productivity, and stability, including information on the factors affecting rates of eutrophication and rates of organic and inorganic sedimentation for varying types of receiving waters.

(2) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after October 18, 1972 (and from time to time thereafter revise) information (A) on the factors necessary to restore and maintain the chemical, physical, and biological integrity of all navigable waters, ground waters, waters of the contiguous zone, and the oceans; (B) on the factors necessary for the protection and propagation of shellfish, fish, and wildlife for classes and categories of receiving waters and to allow recreational activities in and on the water; and (C) on the measurement and classification of water quality; and (D) for the purpose of section 1313 of this title, on and the identification of pollutants suitable for maximum daily load measurement correlated with the achievement of water quality objectives.

(3) Such criteria and information and revisions thereof shall be issued to the States and shall be published in the Federal Register and otherwise made available to the public.

(4) The Administrator shall, within 90 days after December 27, 1977, and from time to time thereafter, publish and revise as appropriate information identifying conventional pollutants, including but not limited to, pollutants classified as biological oxygen demanding, suspended solids, fecal coliform, and pH. The thermal component of any discharge shall not be identified as a conventional pollutant under this paragraph.

(5)(A) The Administrator, to the extent practicable before consideration of any request under section 1311(g) of this title and within six months after December 27, 1977, shall develop and publish information on the factors necessary for the protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and to allow recreational activities, in and on the water.

(B) The Administrator, to the extent practicable before consideration of any application

under section 1311(h) of this title and within six months after December 27, 1977, shall develop and publish information on the factors necessary for the protection of public water supplies, and the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife, and to allow recreational activities, in and on the water.

(6) The Administrator shall, within three months after December 27, 1977, and annually thereafter, for purposes of section 1311(h) of this title publish and revise as appropriate information identifying each water quality standard in effect under this chapter or State law, the specific pollutants associated with such water quality standard, and the particular waters to which such water quality standard applies.

(b) Effluent limitation guidelines

For the purpose of adopting or revising effluent limitations under this chapter the Administrator shall, after consultation with appropriate Federal and State agencies and other interested persons, publish within one year of October 18, 1972, regulations, providing guidelines for effluent limitations, and, at least annually thereafter, revise, if appropriate, such regulations. Such regulations shall—

(1)(A) identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best practicable control technology currently available for classes and categories of point sources (other than publicly owned treatment works); and

(B) specify factors to be taken into account in determining the control measures and practices to be applicable to point sources (other than publicly owned treatment works) within such categories or classes. Factors relating to the assessment of best practicable control technology currently available to comply with subsection (b)(1) of section 1311 of this title shall include consideration of the total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application, and shall also take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate;

(2)(A) identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best control measures and practices achievable including treatment techniques, process and procedure innovations, operating methods, and other alternatives for classes and categories of point sources (other than publicly owned treatment works); and

(B) specify factors to be taken into account in determining the best measures and prac-

ties available to comply with subsection (b)(2) of section 1311 of this title to be applicable to any point source (other than publicly owned treatment works) within such categories or classes. Factors relating to the assessment of best available technology shall take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate;

(3) Identify control measures and practices available to eliminate the discharge of pollutants from categories and classes of point sources, taking into account the cost of achieving such elimination of the discharge of pollutants; and

(4)(A) Identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best conventional pollutant control technology (including measures and practices) for classes and categories of point sources (other than publicly owned treatment works); and

(B) specify factors to be taken into account in determining the best conventional pollutant control technology measures and practices to comply with section 1311(b)(2)(E) of this title to be applicable to any point source (other than publicly owned treatment works) within such categories or classes. Factors relating to the assessment of best conventional pollutant control technology (including measures and practices) shall include consideration of the reasonableness of the relationship between the costs of attaining a reduction in effluents and the effluent reduction benefits derived, and the comparison of the cost and level of reduction of such pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources, and shall take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate.

(c) Pollution discharge elimination procedures

The Administrator, after consultation, with appropriate Federal and State agencies and other interested persons, shall issue to the States and appropriate water pollution control agencies within 270 days after October 18, 1972 (and from time to time thereafter) information on the processes, procedures, or operating methods which result in the elimination or reduction of the discharge of pollutants to implement standards of performance under section 1316 of this title. Such information shall include technical and other data, including costs, as are available on alternative methods of elimi-

nation or reduction of the discharge of pollutants. Such information, and revisions thereof, shall be published in the Federal Register and otherwise shall be made available to the public.

(d) Secondary treatment information; alternative waste treatment management techniques; innovative and alternative wastewater treatment processes; facilities deemed equivalent of secondary treatment

(1) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall publish within sixty days after October 18, 1972 (and from time to time thereafter) information, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, on the degree of effluent reduction attainable through the application of secondary treatment.

(2) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall publish within nine months after October 18, 1972 (and from time to time thereafter) information on alternative waste treatment management techniques and systems available to implement section 1281 of this title.

(3) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall promulgate within one hundred and eighty days after December 27, 1977, guidelines for identifying and evaluating innovative and alternative wastewater treatment processes and techniques referred to in section 1281(g)(5) of this title.

(4) For the purposes of this subsection, such biological treatment facilities as oxidation ponds, lagoons, and ditches and trickling filters shall be deemed the equivalent of secondary treatment. The Administrator shall provide guidance under paragraph (1) of this subsection on design criteria for such facilities, taking into account pollutant removal efficiencies and, consistent with the objectives of this chapter, assuring that water quality will not be adversely affected by deeming such facilities as the equivalent of secondary treatment.

(e) Best management practices for industry

The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, may publish regulations, supplemental to any effluent limitations specified under subsections (b) and (c) of this section for a class or category of point sources, for any specific pollutant which the Administrator is charged with a duty to regulate as a toxic or hazardous pollutant under section 1317(a)(1) or 1321 of this title, to control plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage which the Administrator determines are associated with or ancillary to the industrial manufacturing or treatment process within such class or category of point sources and may contribute significant amounts of such pollutants to navigable waters. Any applicable controls established under this subsection shall be included as a requirement for the purposes of section 1311, 1312, 1316, 1317, or 1343 of this title, as

the case may be, in any permit issued to a point source pursuant to section 1342 of this title.

(f) Identification and evaluation of nonpoint sources of pollution; processes, procedures, and methods to control pollution

The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall issue to appropriate Federal agencies, the States, water pollution control agencies, and agencies designated under section 1288 of this title, within one year after October 18, 1972 (and from time to time thereafter) information including (1) guidelines for identifying and evaluating the nature and extent of nonpoint sources of pollutants, and (2) processes, procedures, and methods to control pollution resulting from—

(A) agricultural and silvicultural activities, including runoff from fields and crop and forest lands;

(B) mining activities, including runoff and siltation from new, currently operating, and abandoned surface and underground mines;

(C) all construction activity, including runoff from the facilities resulting from such construction;

(D) the disposal of pollutants in wells or in subsurface excavations;

(E) salt water intrusion resulting from reductions of fresh water flow from any cause, including extraction of ground water, irrigation, obstruction, and diversion; and

(F) changes in the movement, flow, or circulation of any navigable waters or ground waters, including changes caused by the construction of dams, levees, channels, causeways, or flow diversion facilities.

Such information and revisions thereof shall be published in the Federal Register and otherwise made available to the public.

(g) Guidelines for pretreatment of pollutants

(1) For the purpose of assisting States in carrying out programs under section 1342 of this title, the Administrator shall publish, within one hundred and twenty days after October 18, 1972, and review at least annually thereafter and, if appropriate, revise guidelines for pretreatment of pollutants which he determines are not susceptible to treatment by publicly owned treatment works. Guidelines under this subsection shall be established to control and prevent the discharge into the navigable waters, the contiguous zone, or the ocean (either directly or through publicly owned treatment works) of any pollutant which interferes with, passes through, or otherwise is incompatible with such works.

(2) When publishing guidelines under this subsection, the Administrator shall designate the category or categories of treatment works to which the guidelines shall apply.

(h) Test procedures guidelines

The Administrator shall, within one hundred and eighty days from October 18, 1972, promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 1341 of this title or permit application pursuant to section 1342 of this title.

(i) Guidelines for monitoring, reporting, enforcement, funding, personnel, and manpower

The Administrator shall (1) within sixty days after October 18, 1972, promulgate guidelines for the purpose of establishing uniform application forms and other minimum requirements for the acquisition of information from owners and operators of point-sources of discharge subject to any State program under section 1342 of this title, and (2) within sixty days from October 18, 1972, promulgate guidelines establishing the minimum procedural and other elements of any State program under section 1342 of this title, which shall include:

(A) monitoring requirements;

(B) reporting requirements (including procedures to make information available to the public);

(C) enforcement provisions; and
(D) funding, personnel qualifications, and manpower requirements (including a requirement that no board or body which approves permit applications or portions thereof shall include, as a member, any person who receives, or has during the previous two years received, a significant portion of his income directly or indirectly from permit holders or applicants for a permit).

(j) Restoration and enhancement of publicly owned fresh water lakes

The Administrator shall issue information biennially on methods, procedures, and processes as may be appropriate to restore and enhance the quality of the Nation's publicly owned freshwater lakes.

(k) Agreements with Secretaries of Agriculture, Army, and Interior to provide maximum utilization of programs to achieve and maintain water quality; transfer of funds; authorization of appropriations

(1) The Administrator shall enter into agreements with the Secretary of Agriculture, the Secretary of the Army, and the Secretary of the Interior, and the heads of such other departments, agencies, and instrumentalities of the United States as the Administrator determines, to provide for the maximum utilization of other Federal laws and programs for the purpose of achieving and maintaining water quality through appropriate implementation of plans approved under section 1288 of this title.

(2) The Administrator is authorized to transfer to the Secretary of Agriculture, the Secretary of the Army, and the Secretary of the Interior and the heads of such other departments, agencies, and instrumentalities of the United States as the Administrator determines, any funds appropriated under paragraph (3) of this subsection to supplement funds otherwise appropriated to programs authorized pursuant to any agreement under paragraph (1).

(3) There is authorized to be appropriated to carry out the provisions of this subsection, \$100,000,000 per fiscal year for the fiscal years 1979 through 1983.

(June 30, 1948, ch. 758, title III, § 304, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 850, and amended Dec. 27, 1977, Pub. L. 95-217.

§§ 48-51, 62(b), 91 Stat. 1587, 1588, 1596; Dec. 29, 1981, Pub. L. 97-117, § 23, 95 Stat. 1632.)

CODIFICATION

Section 50 of Pub. L. 95-217 provided in part that, upon the enactment of subsec. (e) of this section by Pub. L. 95-217 and the concurrent redesignation of former subsecs. (e) to (f) of this section as (f) to (k), respectively, all references to former subsec. (e) to (f) be changed to (f) to (k), respectively.

AMENDMENTS

1961—Subsec. (d)(4), Pub. L. 97-117 added par. (4).
1977—Subsec. (a)(4) to (8), Pub. L. 95-217, § 48(a), added pars. (4) to (8).

Subsec. (b)(4), Pub. L. 95-217, § 48(b), added par. (4).
Subsec. (d)(3), Pub. L. 95-217, § 49, added par. (3).

Subsecs. (e) to (f), Pub. L. 95-217, § 50, added subsec. (e) and redesignated former subsec. (e) to (h) as (f) to (i), respectively. Former subsec. (i) redesignated (j).

Subsec. (j), Pub. L. 95-217, §§ 50, 62(b), redesignated former subsec. (i) as (j) and, in subsec. (j) as so redesignated, substituted "shall issue information biennially on methods" for "shall, within 270 days after October 18, 1972 (and from time to time thereafter), issue such information on methods". Former subsec. (j) redesignated (k).

Subsec. (k), Pub. L. 95-217, §§ 50, 51, redesignated former subsec. (j) as (k) and, in subsec. (k) as so redesignated, substituted "The Administrator shall enter into agreements with the Secretary of Agriculture, the Secretary of the Army, and the Secretary of the Interior, and the heads of such other departments, agencies, and instrumentalities of the United States as the Administrator determines, to provide the maximum utilization of other Federal laws and programs" for "The Administrator shall, within six months from October 18, 1972, enter into agreements with the Secretary of Agriculture, the Secretary of the Army, and the Secretary of the Interior to provide for the maximum utilization of the appropriate programs authorized under other Federal law to be carried out by such Secretaries" in par. (1), made conforming amendments in par. (2), and, in par. (3), authorized the year for the fiscal years 1979 through 1982.

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, relating to compliance with this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of the date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, § 102(f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 8, Government Organization and Employees.

REVIEW OF EFFLUENT GUIDELINES PROMULGATED PRIOR TO DECEMBER 27, 1977

Section 73 of Pub. L. 95-217 provided that: "Within 90 days after the date of enactment of this Act (Dec. 27, 1977), the Administrator shall review every effluent guidelines promulgated prior to the date of enactment of this Act which is final or interim final (other than those applicable to industrial categories listed in table 2 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives) and which applies to those pollutants identified pursuant to section 304(a)(4) of the Federal Water Pollution Control Act [subsec. (a)(4) of this section]. The Administrator shall review every guideline applicable to industrial categories listed in such table 2 on or before July 1,

1980. Upon completion of each such review the Administrator is authorized to make such adjustments in any such guidelines as may be necessary to carry out section 304(b)(4) of such Act [subsec. (b)(4) of this section]. The Administrator shall publish the results of each such review, including, with respect to each such guideline, the determination to adjust or not to adjust such guideline. Any such determination by the Administrator shall be final except that if, on judicial review in accordance with section 509 of such Act [section 1369 of this title], it is determined that the Administrator either did not comply with the requirements of this section or the determination of the Administrator was based on arbitrary and capricious action in applying section 304(b)(4) of such Act [subsec. (b)(4) of this section] to such guideline, the Administrator shall make a further review and redetermination of any such guideline."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1255, 1261, 1264, 1268, 1282, 1311, 1313, 1315, 1317, 1322, 1323, 1342, 1344, 1369, 1376 of this title.

§ 1315. State reports on water quality; transmittal to Congress

(a) Omitted

(b)(1) Each State shall prepare and submit to the Administrator by April 1, 1975, and shall bring up to date by April 1, 1976, and biennially thereafter, a report which shall include—

(A) a description of the water quality of all navigable waters in such State during the preceding year, with appropriate supplemental descriptions as shall be required to take into account seasonal, tidal, and other variations, correlated with the quality of water required by the objective of this chapter (as identified by the Administrator pursuant to criteria published under section 1314(a) of this title) and the water quality described in subparagraph (B) of this paragraph;

(B) an analysis of the extent to which all navigable waters of such State provide for the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities in and on the water;

(C) an analysis of the extent to which the elimination of the discharge of pollutants and a level of water quality which provides for the protection and propagation of a balanced population of shellfish, fish, and wildlife and allows recreational activities in and on the water, have been or will be achieved by the requirements of this chapter, together with recommendations as to additional action necessary to achieve such objectives and for what waters such additional action is necessary;

(D) an estimate of (i) the environmental impact, (ii) the economic and social costs necessary to achieve the objective of this chapter in such State, (iii) the economic and social benefits of such achievement, and (iv) an estimate of the date of such achievement; and

(E) a description of the nature and extent of nonpoint sources of pollutants, and recommendations as to the programs which must be undertaken to control each category of such sources, including an estimate of the costs of implementing such programs.

(2) The Administrator shall transmit such State reports, together with an analysis thereof, to Congress on or before October 1, 1975, and October 1, 1976, and biennially thereafter. (June 30, 1948, ch. 758, title III, § 305, as added Oct. 16, 1972, Pub. L. 92-500, § 2, 86 Stat. 853, and amended Dec. 27, 1977, Pub. L. 95-217, § 52, 91 Stat. 1589.)

CODIFICATION

Subsec. (a) authorized the Administrator, in cooperation with the States and Federal agencies, to prepare a report describing the specific quality, during 1973, of all navigable waters and waters of the contiguous zone, including an inventory of all point sources of discharge of pollutants into these waters, and identifying those navigable waters capable of supporting fish and wildlife populations and allowing recreational activities, those which could reasonably be expected to attain this level by 1977 or 1983, and those which could attain this level sooner, and submit this report to Congress on or before Jan. 1, 1974.

AMENDMENTS

1977—Subsec. (b)(1). Pub. L. 95-217, § 52(1), substituted "April 1, 1975, and shall bring up to date by April 1, 1976, and biennially thereafter" for "January 1, 1975, and shall bring up to date each year thereafter" in the provisions preceding subpar. (A).

Subsec. (b)(2). Pub. L. 95-217, § 52(2), substituted "on or before October 1, 1975, and October 1, 1976, and biennially thereafter" for "on or before October 1, 1975, and annually thereafter".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1311, 1313, 1314, 1317, 1319, 1323, 1324, 1341, 1342, 1365, 1367, 1369, 1371, 1374 of this title.

§ 1316. National standards of performance

(a) Definitions

For purposes of this section:

(1) The term "standard of performance" means a standard for the control of the discharge of pollutants which reflect the greatest degree of effluent reduction which the Administrator determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

(2) The term "new source" means any source, the construction of which is commenced after the publication of proposed regulations prescribing a standard of performance under this section which will be applicable to such source, if such standard is thereafter promulgated in accordance with this section.

(3) The term "source" means any building, structure, facility, or installation from which there is or may be the discharge of pollutants.

(4) The term "owner or operator" means any person who owns, leases, operates, controls, or supervises a source.

(5) The term "construction" means any placement, assembly, or installation of facilities or equipment (including contractual obligations to purchase such facilities or equipment) at the premises where such equipment will be used, including preparation work at such premises.

(b) Categories of sources; Federal standards of performance for new sources

(1)(A) The Administrator shall, within ninety days after October 18, 1972, publish (and from time to time thereafter shall revise) a list of categories of sources, which shall, at the minimum, include:

- pulp and paper mills;
- paperboard, builders paper and board mills;
- meat product and rendering processing;
- dairy product processing;
- grain mills;
- canned and preserved fruits and vegetables processing;
- canned and preserved seafood processing;
- sugar processing;
- textile mills;
- cement manufacturing;
- feedlots;
- electroplating;
- organic chemicals manufacturing;
- inorganic chemicals manufacturing;
- plastic and synthetic materials manufacturing;
- soap and detergent manufacturing;
- fertilizer manufacturing;
- petroleum refining;
- iron and steel manufacturing;
- nonferrous metals manufacturing;
- phosphate manufacturing;
- steam electric powerplants;
- ferroalloy manufacturing;
- leather tanning and finishing;
- glass and asbestos manufacturing;
- rubber processing; and
- timber products processing.

(B) As soon as practicable, but in no case more than one year, after a category of sources is included in a list under subparagraph (A) of this paragraph, the Administrator shall propose and publish regulations establishing Federal standards of performance for new sources within such category. The Administrator shall afford interested persons an opportunity for written comment on such proposed regulations. After considering such comments, he shall promulgate, within one hundred and twenty days after publication of such proposed regulations, such standards with such adjustments as he deems appropriate. The Administrator shall, from time to time, as technology and alternatives change, revise such standards following the procedure required by this subsection for promulgation of such standards. Standards of performance, or revisions thereof, shall become effective upon promulgation. In establishing or revising Federal standards of performance for new sources under this section, the Administrator shall take into consideration the cost of achieving such effluent reduction, and any non-water quality, environmental impact and energy requirements.

(2) The Administrator may distinguish among classes, types, and sizes within categories of new sources for the purpose of establishing such standards and shall consider the type of process employed (including whether batch or continuous).

(3) The provisions of this section shall apply to any new source owned or operated by the United States.

(c) State enforcement of standards of performance

Each State may develop and submit to the Administrator a procedure under State law for applying and enforcing standards of performance for new sources located in such State. If the Administrator finds that the procedure and the law of any State require the application and enforcement of standards of performance to at least the same extent as required by this section, such State is authorized to apply and enforce such standards of performance (except with respect to new sources owned or operated by the United States).

(d) Protection from more stringent standards

Notwithstanding any other provision of this chapter, any point source the construction of which is commenced after October 18, 1972, and which is so constructed as to meet all applicable standards of performance shall not be subject to any more stringent standard of performance during a ten-year period beginning on the date of completion of such construction or during the period of depreciation or amortization of such facility for the purposes of section 167 or 169 (or both) of title 26 whichever period ends first.

(e) Illegality of operation of new sources in violation of applicable standards of performance

After the effective date of standards of performance promulgated under this section, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source.

(June 30, 1949, ch. 758, title III, § 306, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 854.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1311, 1313, 1314, 1319, 1319, 1323, 1326, 1341, 1342, 1396, 1397, 1369, 1371, 1374 of this title.

§ 1317. Toxic and pretreatment effluent standards

(a) Toxic pollutant list; revision; hearing; promulgation of standards; effective date; consultation

(1) On and after December 27, 1977, the list of toxic pollutants or combination of pollutants subject to this chapter shall consist of those toxic pollutants listed in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives, and the Administrator shall publish, not later than the thirtieth day after December 27, 1977, that list. From time to time thereafter, the Administrator may revise such list and the Administrator is authorized to add to or remove from such list any pollutant. The Administrator in publishing any revised list, including the addition or removal of any pollutant from such list, shall take into account toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms, and the nature and extent of the effect of the toxic pollutant

on such organisms. A determination of the Administrator under this paragraph shall be final except that if, on judicial review, such determination was based on arbitrary and capricious action of the Administrator, the Administrator shall make a redetermination.

(2) Each toxic pollutant listed in accordance with paragraph (1) of this subsection shall be subject to effluent limitations resulting from the application of the best available technology economically achievable for the applicable category or class of point sources established in accordance with sections 1311(b)(2)(A) and 1314(b)(2) of this title. The Administrator, in his discretion, may publish in the Federal Register a proposed effluent standard (which may include a prohibition) establishing requirements for a toxic pollutant which, if an effluent limitation is applicable to a class or category of point sources, shall be applicable to such category or class only if such standard imposes more stringent requirements. Such published effluent standard (or prohibition) shall take into account the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms and the nature and extent of the effect of the toxic pollutant on such organisms, and the extent to which effective control is being or may be achieved under other regulatory authority. The Administrator shall allow a period of not less than sixty days following publication of any such proposed effluent standard (or prohibition) for written comment by interested persons on such proposed standard. In addition, if within thirty days of publication of any such proposed effluent standard (or prohibition) any interested person so requests, the Administrator shall hold a public hearing in connection therewith. Such a public hearing shall provide an opportunity for oral and written presentations, such cross-examination as the Administrator determines is appropriate on disputed issues of material fact, and the transcription of a verbatim record which shall be available to the public. After consideration of such comments and any information and material presented at any public hearing held on such proposed standard or prohibition, the Administrator shall promulgate such standard (or prohibition) with such modification as the Administrator finds are justified. Such promulgation by the Administrator shall be made within two hundred and seventy days after publication of proposed standard (or prohibition). Such standard (or prohibition) shall be final except that if, on judicial review, such standard was not based on substantial evidence, the Administrator shall promulgate a revised standard. Effluent limitations shall be established in accordance with sections 1311(b)(2)(A) and 1314(b)(2) of this title for every toxic pollutant referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives as soon as practicable after December 27, 1977, but no later than July 1, 1980. Such effluent limitations or effluent standards (or prohibitions) shall be established for every other toxic

pollutant listed under paragraph (1) of this subsection as soon as practicable after it is so listed.

(3) Each such effluent standard (or prohibition) shall be reviewed and, if appropriate, revised at least every three years.

(4) Any effluent standard promulgated under this section shall be at that level which the Administrator determines provides an ample margin of safety.

(5) When proposing or promulgating any effluent standard (or prohibition) under this section, the Administrator shall designate the category or categories of sources to which the effluent standard (or prohibition) shall apply. Any disposal of dredged material may be included in such a category of sources after consultation with the Secretary of the Army.

(6) Any effluent standard (or prohibition) established pursuant to this section shall take effect on such date or dates as specified in the order promulgating such standard, but in no case, more than one year from the date of such promulgation. If the Administrator determines that compliance within one year from the date of promulgation is technologically infeasible for a category of sources, the Administrator may establish the effective date of the effluent standard (or prohibition) for such category at the earliest date upon which compliance can be feasibly attained by sources within such category, but in no event more than three years after the date of such promulgation.

(7) Prior to publishing any regulations pursuant to this section the Administrator shall, to the maximum extent practicable within the time provided, consult with appropriate advisory committees, States, independent experts, and Federal departments and agencies.

(b) Pretreatment standards; hearing; promulgation; compliance period; revision; application to State and local laws

(1) The Administrator shall, within one hundred and eighty days after October 18, 1972, and from time to time thereafter, publish proposed regulations establishing pretreatment standards for introduction of pollutants into treatment works (as defined in section 1292 of this title) which are publicly owned for those pollutants which are determined not to be susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works. Not later than ninety days after such publication, and after opportunity for public hearing, the Administrator shall promulgate such pretreatment standards. Pretreatment standards under this subsection shall specify a time for compliance not to exceed three years from the date of promulgation and shall be established to prevent the discharge of any pollutant through treatment works (as defined in section 1292 of this title) which are publicly owned, which pollutant interferes with, passes through, or otherwise is incompatible with such works. If, in the case of any toxic pollutant under subsection (a) of this section introduced by a source into a publicly owned treatment works, the treatment by such works removes all or any part of such toxic pollutant and the discharge from such works does not

violate that effluent limitation or standard which would be applicable to such toxic pollutant if it were discharged by such source other than through a publicly owned treatment works, and does not prevent sludge use or disposal by such works in accordance with section 1345 of this title, then the pretreatment requirements for the sources actually discharging such toxic pollutant into such publicly owned treatment works may be revised by the owner or operator of such works to reflect the removal of such toxic pollutant by such works.

(2) The Administrator shall, from time to time, as control technology, processes, operating methods, or other alternatives change, revise such standards following the procedure established by this subsection for promulgation of such standards.

(3) When proposing or promulgating any pretreatment standard under this section, the Administrator shall designate the category or categories of sources to which such standard shall apply.

(4) Nothing in this subsection shall affect any pretreatment requirement established by any State or local law not in conflict with any pretreatment standard established under this subsection.

(c) New sources of pollutants into publicly owned treatment works

In order to insure that any source introducing pollutants into a publicly owned treatment works, which source would be a new source subject to section 1316 of this title if it were to discharge pollutants, will not cause a violation of the effluent limitations established for any such treatment works, the Administrator shall promulgate pretreatment standards for the category of such sources simultaneously with the promulgation of standards of performance under section 1316 of this title for the equivalent category of new sources. Such pretreatment standards shall prevent the discharge of any pollutant into such treatment works, which pollutant may interfere with, pass through, or otherwise be incompatible with such works.

(d) Operation in violation of standards unlawful

After the effective date of any effluent standard or prohibition or pretreatment standard promulgated under this section, it shall be unlawful for any owner or operator of any source to operate any source in violation of any such effluent standard or prohibition or pretreatment standard.

(June 30, 1948, ch. 758, title III, § 307, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 856, and amended Dec. 27, 1977, Pub. L. 95-217, §§ 53(a), (b), 54(a), 91 Stat. 1589-1591.)

AMENDMENTS

1977—Subsec. (a)(1), Pub. L. 95-217, § 53(a), substituted "On and after December 27, 1977, the list of toxic pollutants or combination of pollutants subject to this chapter shall consist of those toxic pollutants listed in table 1 of Committee Print Numbered 98-30 of the Committee on Public Works and Transportation of the House of Representatives, and the Administrator shall publish, not later than the thirtieth day after December 27, 1977, that list" for "The Adminis-

trator shall, within ninety days after October 18, 1973, publish (and from time to time thereafter revise) a list which includes any toxic pollutant or combination of such pollutants for which an effluent standard (which may include a prohibition of the discharge of such pollutants or combination of such pollutants) will be established under this section" and added provision for the revision of the list and for the finality of the Administrator's determination except when that determination is arbitrary and capricious.

Subsec. (a)(2), Pub. L. 95-217, § 53(a), expanded provisions covering effluent limitations and the establishment of effluent standards (or prohibitions). Introduced provisions relating to the application of the best available technology economically achievable for the applicable category or class of point sources established in accordance with sections 1311(b)(2)(A) and 1314(b)(2) of this title, added provision that published effluent standards take into account the extent to which effective control is being or may be achieved under other regulatory authority, added provision for a sixty day minimum period following publication of proposed effluent standards for written comment, substituted two hundred and seventy days for six months as the period following publication of proposed standards during which period standards (or prohibitions) must be promulgated, and added provision for the finality of effluent limitations (or prohibitions) except if, on judicial review, the standard was not based on substantial evidence.

Subsec. (a)(3), Pub. L. 95-217, § 53(a), struck out provision for the immediate promulgation of revised effluent standards (or prohibitions) for pollutants or combinations of pollutants if, after public hearings, the Administrator found that a modification of such proposed standards (or prohibitions) was justified. See subsec. (a)(2) of this section.

Subsec. (a)(6), Pub. L. 95-217, § 53(b), added provision that if the Administrator determines that compliance with effluent standards (or prohibitions) within one year from the date of promulgation is technologically infeasible for a category of sources, the Administrator may establish the effective date of the effluent standard (or prohibition) for that category at the earliest date upon which compliance can be feasibly attained by sources within such category, but in no event more than three years after the date of such promulgation.

Subsec. (b)(1), Pub. L. 95-217, § 54(a), added provision that if, in the case of any toxic pollutant under subsection (a) of this section introduced by a source into a publicly owned treatment works, the treatment by the works removes all or any part of the toxic pollutant and the discharge from the works does not violate that effluent limitation or standard which would be applicable to the toxic pollutant if it were discharged by the source other than through a publicly owned treatment works, and does not prevent sludge use or disposal by the works in accordance with section 1345 of this title, then the pretreatment requirements for the sources actually discharging the toxic pollutant into the publicly owned treatment works may be revised by the owner or operator of the works to reflect the removal of the toxic pollutant by the works.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1288, 1311, 1313, 1314, 1316, 1323, 1341, 1342, 1344, 1365, 1367, 1369, 1374 of this title; title 42 section 9601.

§ 1318. Records and reports; inspections

(a) Maintenance; monitoring equipment; entry; access to information

Whenever required to carry out the objective of this chapter, including but not limited to (1) developing or assisting in the development of any effluent limitation, or other limitation, pro-

hibition, or effluent standard, pretreatment standard, or standard of performance under this chapter; (2) determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; (3) any requirement established under this section; or (4) carrying out sections 1315, 1321, 1342, 1344 (relating to State permit programs), and 1364 of this title—

(A) the Administrator shall require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (v) provide such other information as he may reasonably require; and

(B) the Administrator or his authorized representative, upon presentation of his credentials—

(i) shall have a right of entry to, upon, or through any premises in which an effluent source is located or in which any records required to be maintained under clause (A) of this subsection are located, and

(ii) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under clause (A), and sample any effluents which the owner or operator of such source is required to sample under such clause.

(b) Availability to public; trade secrets exception

Any records, reports, or information obtained under this section (1) shall, in the case of effluent data, be related to any applicable effluent limitations, toxic, pretreatment, or new source performance standards, and (2) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof (other than effluent data), to which the Administrator has access under this section, if made public would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information, or particular portion thereof confidential in accordance with the purposes of section 1906 of title 18, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter or when relevant in any proceeding under this chapter.

(c) Application of State law

Each State may develop and submit to the Administrator procedures under State law for inspection, monitoring, and entry with respect to point sources located in such State. If the Administrator finds that the procedures and the law of any State relating to inspection, monitoring, and entry are applicable to at least the same extent as those required by this section, such State is authorized to apply and en-

force its procedures for inspection, monitoring, and entry with respect to point sources located in such State (except with respect to point sources owned or operated by the United States).

(June 30, 1948, ch. 758, title III, § 308, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 858, and amended Dec. 27, 1977, Pub. L. 95-217, § 67(c)(1), 91 Stat. 1806.)

AMENDMENTS

1977—Subsec. (a)(4). Pub. L. 95-217 added "1344 (relating to State permit programs)," following "sections 1318, 1321, 1342," in the provisions preceding subpar. (A).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1319, 1342, 1344 of this title; title 42 section 9906.

§ 1319. Enforcement

(a) State enforcement; compliance orders

(1) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any condition or limitation which implements section 1311, 1312, 1316, 1317, 1318, 1328, or 1345 of this title in a permit issued by a State under an approved permit program under section 1342 or 1344 of this title he shall proceed under his authority in paragraph (3) of this subsection or he shall notify the person in alleged violation and such State of such finding. If beyond the thirtieth day after the Administrator's notification the State has not commenced appropriate enforcement action, the Administrator shall issue an order requiring such person to comply with such condition or limitation or shall bring a civil action in accordance with subsection (b) of this section.

(2) Whenever, on the basis of information available to him, the Administrator finds that violations of permit conditions or limitations as set forth in paragraph (1) of this subsection are so widespread that such violations appear to result from a failure of the State to enforce such permit conditions or limitations effectively, he shall so notify the State. If the Administrator finds such failure extends beyond the thirtieth day after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such conditions and limitations (hereafter referred to in this section as the period of "federally assumed enforcement"), except where an extension has been granted under paragraph (5)(B) of this subsection, the Administrator shall enforce any permit condition or limitation with respect to any person—

(A) by issuing an order to comply with such condition or limitation, or

(B) by bringing a civil action under subsection (b) of this section.

(3) Whenever on the basis of any information available to him the Administrator finds that any person is in violation of section 1311, 1312, 1316, 1317, 1318, 1328, or 1345 of this title, or is in violation of any permit condition or limita-

tion implementing any of such sections in a permit issued under section 1342 of this title by him or by a State or in a permit issued under section 1344 of this title by a State, he shall issue an order requiring such person to comply with such section or requirement, or he shall bring a civil action in accordance with subsection (b) of this section.

(4) A copy of any order issued under this subsection shall be sent immediately by the Administrator to the State in which the violation occurs and other affected States. In any case in which an order under this subsection (or notice to a violator under paragraph (1) of this subsection) is issued to a corporation, a copy of such order (or notice) shall be served on any appropriate corporate officers. An order issued under this subsection relating to a violation of section 1318 of this title shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation.

(5)(A) Any order issued under this subsection shall be by personal service, shall state with reasonable specificity the nature of the violation, and shall specify a time for compliance not to exceed thirty days in the case of a violation of an interim compliance schedule or operation and maintenance requirement and not to exceed a time the Administrator determines to be reasonable in the case of a violation of a final deadline, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(B) The Administrator may, if he determines (i) that any person who is a violator of, or any person who is otherwise not in compliance with, the time requirements under this chapter or in any permit issued under this chapter, has acted in good faith, and has made a commitment (in the form of contracts or other securities) of necessary resources to achieve compliance by the earliest possible date after July 1, 1977, but not later than April 1, 1979; (ii) that any extension under this provision will not result in the imposition of any additional controls on any other point or nonpoint source; (iii) that an application for a permit under section 1342 of this title was filed for such person prior to December 31, 1974; and (iv) that the facilities necessary for compliance with such requirements are under construction, grant an extension of the date referred to in section 1311(b)(1)(A) of this title to a date which will achieve compliance at the earliest time possible but not later than April 1, 1979.

(5) Whenever, on the basis of information available to him, the Administrator finds (A) that any person is in violation of section 1311(b)(1)(A) or (C) of this title, (B) that such person cannot meet the requirements for a time extension under section 1311(C)(2) of this title, and (C) that the most expeditious and appropriate means of compliance with this chapter by such person is to discharge into a publicly owned treatment works, then, upon request of such person, the Administrator may issue an order requiring such person to comply with this chapter at the earliest date practicable, but not later than July 1, 1983, by discharging into a

publicly owned treatment works if such works concur with such order. Such order shall include a schedule of compliance.

(b) **Civil actions**

The Administrator is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation for which he is authorized to issue a compliance order under subsection (a) of this section. Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance. Notice of the commencement of such action shall be given immediately to the appropriate State.

(c) **Criminal penalties**

(1) Any person who willfully or negligently violates section 1311, 1312, 1316, 1317, or 1318 of this title, or any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator or by a State or in a permit issued under section 1344 of this title by a State, shall be punished by a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$50,000 per day of violation, or by imprisonment for not more than two years, or by both.

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both.

(3) For the purposes of this subsection, the term "person" shall mean, in addition to the definition contained in section 1362(5) of this title, any responsible corporate officer.

(d) **Civil penalties**

Any person who violates section 1311, 1312, 1316, 1317, 1318, 1323, or 1345 of this title, or any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator, or by a State, or in a permit issued under section 1344 of this title by a State, and any person who violates any order issued by the Administrator under subsection (a) of this section, shall be subject to a civil penalty not to exceed \$10,000 per day of such violation.

(e) **State liability for judgments and expenses**

Whenever a municipality is a party to a civil action brought by the United States under this section, the State in which such municipality is located shall be joined as a party. Such State shall be liable for payment of any judgment, or any expenses incurred as a result of complying

with any judgment, entered against the municipality in such action to the extent that the laws of that State prevent the municipality from raising revenues needed to comply with such judgment.

(f) **Wrongful introduction of pollutants into treatment works**

Whenever, on the basis of any information available to him, the Administrator finds that an owner or operator of any source is introducing a pollutant into a treatment works in violation of subsection (d) of section 1317 of this title, the Administrator may notify the owner or operator of such treatment works and the State of such violation. If the owner or operator of the treatment works does not commence appropriate enforcement action within 30 days of the date of such notification, the Administrator may commence a civil action for appropriate relief, including but not limited to, a permanent or temporary injunction, against the owner or operator of such treatment works. In any such civil action the Administrator shall join the owner or operator of such source as a party to the action. Such action shall be brought in the district court of the United States in the district in which the treatment works is located. Such court shall have jurisdiction to restrain such violation and to require the owner or operator of the treatment works and the owner or operator of the source to take such action as may be necessary to come into compliance with this chapter. Notice of commencement of any such action shall be given to the State. Nothing in this subsection shall be construed to limit or prohibit any other authority the Administrator may have under this chapter.

(June 30, 1948, ch. 758, title III, § 309, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 889, and amended Dec. 27, 1977, Pub. L. 95-217, §§ 54(b), 55, 56, 67(c)(2), 91 Stat. 1591, 1592, 1606.)

AMENDMENTS

1977—Subsec. (a)(1). Pub. L. 95-217, §§ 55(a), 67(c)(2)(A), substituted "1318, 1323, or 1345 of this title" for "or 1318 of this title" and "1342 or 1344 of this title" for "1342 of this title".

Subsec. (a)(2). Pub. L. 95-217, § 54(a), substituted "except where an extension has been granted under paragraph (5)(B) of this subsection, the Administrator shall enforce any permit condition or limitation" for "the Administrator shall enforce any permit condition or limitation".

Subsec. (a)(3). Pub. L. 95-217, §§ 55(b), 67(c)(2)(B), substituted "1318, 1323, or 1345 of this title" for "or 1318 of this title" added "or in a permit issued under section 1344 of this title by a State" following "in a permit issued under section 1342 of this title by him or by a State".

Subsec. (a)(4). Pub. L. 95-217, § 56(b), struck out provision that any order issued under this subsection had to be by personal service and had to state with reasonable specificity the nature of the violation and a time for compliance, not to exceed thirty days, which the Administrator determined to be reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. See section subsec. (a)(3) of this section.

Subsec. (a)(5), (6). Pub. L. 95-217, § 56(c), added para. (6) and (6).

Subsec. (c)(1). Pub. L. 95-217, § 97(c)(2)(C), substituted "by a State or in a permit issued under section 1344 of this title by a State, shall be punished" for "by a State, shall be punished".

Subsec. (d). Pub. L. 95-217, § 55(e), 97(c)(2)(D), substituted "1318, 1326, or 1345 of this title" for "or 1318 of this title" and added "or in a permit issued under section 1344 of this title by a State," following "permit issued under section 1342 of this title by the Administrator, or by a State."

Subsec. (f). Pub. L. 95-217, § 54(b), added subsec. (f).

ACTIONS BY SURGEON GENERAL RELATING TO INTERSTATE POLLUTION

Act July 9, 1956, ch. 518, § 5, 70 Stat. 567, provided that actions by the Surgeon General with respect to water pollutants under section 2(d) of act June 30, 1948, ch. 754, 62 Stat. 1155, as in effect prior to July 9, 1956, which had been completed prior to such date, would still be subject to the terms of section 2(d) of act June 30, 1948, in effect prior to the July 9, 1956 amendment, but that actions with respect to such pollutants would nevertheless subsequently be possible in accordance with the terms of act June 30, 1948, as amended by act July 9, 1956.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1256, 1321, 1342, 1344, 1365, 1368 of this title; title 42 sections 9606, 9607.

§ 1320. International pollution abatement

(a) Hearing; participation by foreign nations

Whenever the Administrator, upon receipt of reports, surveys, or studies from any duly constituted international agency, has reason to believe that pollution is occurring which endangers the health or welfare of persons in a foreign country, and the Secretary of State requests him to abate such pollution, he shall give formal notification thereof to the State water pollution control agency of the State or States in which such discharge or discharges originate and to the appropriate interstate agency, if any. He shall also promptly call such a hearing, if he believes that such pollution is occurring in sufficient quantity to warrant such action, and if such foreign country has given the United States essentially the same rights with respect to the prevention and control of pollution occurring in that country as is given that country by this subsection. The Administrator, through the Secretary of State, shall invite the foreign country which may be adversely affected by the pollution to attend and participate in the hearing, and the representative of such country shall, for the purpose of the hearing and any further proceeding resulting from such hearing, have all the rights of a State water pollution control agency. Nothing in this subsection shall be construed to modify, amend, repeal, or otherwise affect the provisions of the 1909 Boundary Waters Treaty between Canada and the United States or the Water Utilization Treaty of 1944 between Mexico and the United States (59 Stat. 1219), relative to the control and abatement of pollution in waters covered by those treaties.

(b) Functions and responsibilities of Administrator not affected

The calling of a hearing under this section shall not be construed by the courts, the Administrator, or any person as limiting, modify-

ing, or otherwise affecting the functions and responsibilities of the Administrator under this section to establish and enforce water quality requirements under this chapter.

(c) Hearing board; composition; findings of fact; recommendations; implementation of board's decision

The Administrator shall publish in the Federal Register a notice of a public hearing before a hearing board of five or more persons appointed by the Administrator. A majority of the members of the board and the chairman who shall be designated by the Administrator shall not be officers or employees of Federal, State, or local governments. On the basis of the evidence presented at such hearing, the board shall within sixty days after completion of the hearing make findings of fact as to whether or not such pollution is occurring and shall thereupon by decision, incorporating its findings therein, make such recommendations to abate the pollution as may be appropriate and shall transmit such decision and the record of the hearings to the Administrator. All such decisions shall be public. Upon receipt of such decision, the Administrator shall promptly implement the board's decision in accordance with the provisions of this chapter.

(d) Report by alleged polluter

In connection with any hearing called under this subsection, the board is authorized to require any person whose alleged activities result in discharges causing or contributing to pollution to file with it in such forms as it may prescribe, a report based on existing data, furnishing such information as may reasonably be required as to the character, kind, and quantity of such discharges and the use of facilities or other means to prevent or reduce such discharges by the person filing such a report. Such report shall be made under oath or otherwise, as the board may prescribe, and shall be filed with the board within such reasonable period as it may prescribe, unless additional time is granted by it. Upon a showing satisfactory to the board by the person filing such report that such report or portion thereof (other than effluent data), to which the Administrator has access under this section, if made public would divulge trade secrets or secret processes of such person, the board shall consider such report or portion thereof confidential for the purposes of section 1908 of title 18. If any person required to file any report under this paragraph shall fail to do so within the time fixed by the board for filing the same, and such failure shall continue for thirty days after notice of such default, such person shall forfeit to the United States the sum of \$1,000 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States in the district court of the United States where such person has his principal office or in any district in which he does business. The Administrator may upon application therefor remit or mitigate any forfeiture provided for under this subsection.

(e) Compensation of board members

Board members, other than officers or employees of Federal, State, or local governments, shall be for each day (including travel-time) during which they are performing board business, entitled to receive compensation at a rate fixed by the Administrator but not in excess of the maximum rate of pay for grade GS-18, as provided in the General Schedule under section 5332 of title 5, and shall, notwithstanding the limitations of sections §703 and §704 of title 5, be fully reimbursed for travel, subsistence and related expenses.

(f) Enforcement proceedings

When any such recommendation adopted by the Administrator involves the institution of enforcement proceedings against any person to obtain the abatement of pollution subject to such recommendation, the Administrator shall institute such proceedings if he believes that the evidence warrants such proceedings. The district court of the United States shall consider and determine de novo all relevant issues, but shall receive in evidence the record of the proceedings before the conference or hearing board. The court shall have jurisdiction to enter such judgment and orders enforcing such judgment as it deems appropriate or to remand such proceedings to the Administrator for such further action as it may direct.

(June 30, 1948, ch. 758, title III, § 310, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 860.)

§ 1321. Oil and hazardous substance liability

(a) Definitions

For the purpose of this section, the term—

(1) "oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;

(2) "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping, but excludes (A) discharges in compliance with a permit under section 1342 of this title, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 1342 of this title, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 1342 of this title, which are caused by events occurring within the scope of relevant operating or treatment systems;

(3) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel;

(4) "public vessel" means a vessel owned or bareboat-chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;

(5) "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

(6) "owner or operator" means (A) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, and (B) in the case of an onshore facility, and an offshore facility, any person owning or operating such onshore facility or offshore facility, and (C) in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment;

(7) "person" includes an individual, firm, corporation, association, and a partnership.

(8) "remove" or "removal" refers to removal of the oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches;

(9) "contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention on the Territorial Sea and the Contiguous Zone;

(10) "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land;

(11) "offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;

(12) "act of God" means an act occasioned by an unanticipated grave natural disaster;

(13) "barrel" means 42 United States gallons at 60 degrees Fahrenheit;

(14) "hazardous substance" means any substance designated pursuant to subsection (b)(2) of this section;

(15) "inland oil barge" means a non-self-propelled vessel carrying oil in bulk as cargo and certificated to operate only in the inland waters of the United States, while operating in such waters;

(16) "inland waters of the United States" means those waters of the United States lying inside the baseline from which the territorial sea is measured and those waters outside such baseline which are a part of the Gulf Intra-coastal Waterway.¹

(17) "Otherwise subject to the jurisdiction of the United States" means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided for by international agreement to which the United States is a party.

¹So in original. The period probably should be a semicolon.

²So in original. Probably should not be capitalized.

(b) Congressional declaration of policy against discharges of oil or hazardous substances; designation of hazardous substances; study of higher standard of care incentives and report to Congress; liability; penalties; civil actions; penalty limitations, separate offenses, jurisdiction, mitigation of damages and costs, recovery of removal costs and alternative remedies

(1) The Congress hereby declares that it is the policy of the United States that there should be no discharges of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.] or the Deepwater Port Act of 1974 [33 U.S.C. 1501 et seq.], or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.]).

(2)(A) The Administrator shall develop, promulgate, and revise as may be appropriate, regulations designating as hazardous substances, other than oil as defined in this section, such elements and compounds which, when discharged in any quantity into or upon the navigable waters of the United States or adjoining shorelines or the waters of the contiguous zone or in connection with activities under the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.] or the Deepwater Port Act of 1974 [33 U.S.C. 1501 et seq.], or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.]), present an imminent and substantial danger to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, shorelines, and beaches.

(B) The Administrator shall within 18 months after the date of enactment of this paragraph, conduct a study and report to the Congress on methods, mechanisms, and procedures to create incentives to achieve a higher standard of care in all aspects of the management and movement of hazardous substances on the part of owners, operators, or persons in charge of onshore facilities, offshore facilities, or vessels. The Administrator shall include in such study (1) limits of liability, (2) liability for third party damages, (3) penalties and fees, (4) spill prevention plans, (5) current practices in the insurance and banking industries, and (6) whether the penalty enacted in subclause (bb) of clause (iii) of subparagraph (B) of subsection (b)(2) of section 311 of Public Law 92-500 should be enacted.

(3) The discharge of oil or hazardous substances (i) into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or (ii) in connection with activities under the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.] or the Deepwater Port Act of 1974 [33 U.S.C. 1501 et seq.], or which may affect natural resources belonging to, appertaining to,

or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.]), in such quantities as may be harmful as determined by the President under paragraph (4) of this subsection, is prohibited, except (A) in the case of such discharges of oil into the waters of the contiguous zone or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act), where permitted under the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended, and (B) where permitted in quantities and at times and locations or under such circumstances or conditions as the President may, by regulation, determine not to be harmful. Any regulations issued under this subsection shall be consistent with maritime safety and with marine and navigation laws and regulations and applicable water quality standards.

(4) The President shall by regulation, determine for the purposes of this section those quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare of the United States, including but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

(5) Any person in charge of a vessel or of an onshore facility or an offshore facility shall, as soon as he has knowledge of any discharge of oil or a hazardous substance from such vessel or facility in violation of paragraph (3) of this subsection, immediately notify the appropriate agency of the United States Government of such discharge. Any such person (A) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, or (B) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) of this subsection and who is otherwise subject to the jurisdiction of the United States at the time of the discharge, or (C) in charge of an onshore facility or an offshore facility, who fails to notify immediately such agency of such discharge shall, upon conviction, be fined not more than \$10,000, or imprisoned for not more than one year, or both. Notification received pursuant to this paragraph or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(6)(A) Any owner, operator, or person in charge of any onshore facility or offshore facility from which oil or a hazardous substance is discharged in violation of paragraph (3) of this subsection shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than \$5,000 for each offense. Any owner, operator, or person in charge of any vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, and any owner, operator, or person in charge of a vessel

from which oil or a hazardous substance is discharged in violation of paragraph (3)(1) who is otherwise subject to the jurisdiction of the United States at the time of the discharge, shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than \$5,000 for each offense. No penalty shall be assessed unless the owner or operator charged shall have been given notice and opportunity for a hearing on such charge. Each violation is a separate offense. Any such civil penalty may be compromised by such Secretary. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the owner or operator charged, the effect on the owner or operator's ability to continue in business, and the gravity of the violation, shall be considered by such Secretary. The Secretary of the Treasury shall withhold at the request of such Secretary the clearance required by section 91 of title 46 of any vessel the owner or operator of which is subject to the foregoing penalty. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to such Secretary.

(B) The Administrator, taking into account the gravity of the offense, and the standard of care manifested by the owner, operator, or person in charge, may commence a civil action against any such person subject to the penalty under subparagraph (A) of this paragraph to impose a penalty based on consideration of the size of the business of the owner or operator, the effect on the ability of the owner or operator to continue in business, the gravity of the violation, and the nature, extent, and degree of success of any efforts made by the owner, operator, or person in charge to minimize or mitigate the effects of such discharge. The amount of such penalty shall not exceed \$50,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, operator, or person in charge, such penalty shall not exceed \$250,000. Each violation is a separate offense. Any action under this subparagraph may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to assess such penalty. No action may be commenced under this clause where a penalty has been assessed under clause (A) of this paragraph.

(C) In addition to establishing a penalty for the discharge of a hazardous substance, the Administrator may act to mitigate the damage to the public health or welfare caused by such discharge. The cost of such mitigation shall be deemed a cost incurred under subsection (c) of this section for the removal of such substance by the United States Government.

(D) Any costs of removal incurred in connection with a discharge excluded by subsection (a)(2)(C) of this section shall be recoverable from the owner or operator of the source of the discharge in an action brought under section 1319(b) of this title.

(E) Civil penalties shall not be assessed under both this section and section 1319 of this title for the same discharge.

(c) Removal of discharged oil or hazardous substances; National Contingency Plan

(1) Whenever any oil or a hazardous substance is discharged, or there is a substantial threat of such discharge, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.), or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.)) the President is authorized to act to remove or arrange for the removal of such oil or substance at any time, unless he determines such removal will be done properly by the owner or operator of the vessel, onshore facility, or offshore facility from which the discharge occurs.

(2) Within sixty days after October 16, 1972, the President shall prepare and publish a National Contingency Plan for removal of oil and hazardous substances, pursuant to this subsection. Such National Contingency Plan shall provide for efficient, coordinated, and effective action to minimize damage from oil and hazardous substance discharges, including containment, dispersal, and removal of oil and hazardous substances, and shall include, but not be limited to—

(A) assignment of duties and responsibilities among Federal departments and agencies in coordination with State and local agencies, including, but not limited to, water pollution control, conservation, and port authorities;

(B) identification, procurement, maintenance, and storage of equipment and supplies;

(C) establishment or designation of a strike force consisting of personnel who shall be trained, prepared, and available to provide necessary services to carry out the Plan, including the establishment at major ports, to be determined by the President, of emergency task forces of trained personnel, adequate oil and hazardous substance pollution control equipment and material, and a detailed oil and hazardous substance pollution prevention and removal plan;

(D) a system of surveillance and notice designed to insure earliest possible notice of discharges of oil and hazardous substances and imminent threats of such discharges to the appropriate State and Federal agencies;

(E) establishment of a national center to provide coordination and direction for operations in carrying out the Plan;

(F) procedures and techniques to be employed in identifying, containing, dispersing, and removing oil and hazardous substances;

(G) a schedule, prepared in cooperation with the States, identifying (1) dispersants and other chemicals, if any, that may be used

in carrying out the Plan, (ii) the waters in which such dispersants and chemicals may be used, and (iii) the quantities of such dispersant or chemical which can be used safely in such waters, which schedule shall provide in the case of any dispersant, chemical, or waters not specifically identified in such schedule that the President, or his delegate, may, on a case-by-case basis, identify the dispersants and other chemicals which may be used, the waters in which they may be used, and the quantities which can be used safely in such waters; and

(H) a system whereby the State or States affected by a discharge of oil or hazardous substance may act where necessary to remove such discharge and such State or States may be reimbursed from the fund established under subsection (k) of this section for the reasonable costs incurred in such removal.

The President may, from time to time, as he deems advisable revise or otherwise amend the National Contingency Plan. After publication of the National Contingency Plan, the removal of oil and hazardous substances and actions to minimize damage from oil and hazardous substance discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan.

(d) Maritime disaster discharges

Whenever a marine disaster in or upon the navigable waters of the United States has created a substantial threat of a pollution hazard to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and the public and private shorelines and beaches of the United States, because of a discharge, or an imminent discharge, of large quantities of oil, or of a hazardous substance from a vessel the United States may (A) coordinate and direct all public and private efforts directed at the removal or elimination of such threat; and (B) summarily remove, and, if necessary, destroy such vessel by whatever means are available without regard to any provisions of law governing the employment of personnel or the expenditure of appropriated funds. Any expense incurred under this subsection or under the Intervention on the High Seas Act (33 U.S.C. 1471 et seq.) (or the convention defined in section 2(3) thereof (33 U.S.C. 1471(3))) shall be a cost incurred by the United States Government for the purposes of subsection (f) of this section in the removal of oil or hazardous substance.

(e) Judicial relief

In addition to any other action taken by a State or local government, when the President determines there is an imminent and substantial threat to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and public and private property, shorelines, and beaches within the United States, because of an actual or threatened discharge of oil or hazardous substance into or upon the navigable waters of the United States from an onshore or offshore facility, the President may require the United States attorney of the district in which the

threat occurs to secure such relief as may be necessary to abate such threat, and the district courts of the United States shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

(f) Liability for actual costs of removal

(1) Except where an owner or operator can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any vessel from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the removal of such oil or substance by the United States Government in an amount not to exceed, in the case of an inland oil barge \$125 per gross ton of such barge, or \$125,000, whichever is greater, and in the case of any other vessel, \$150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, \$250,000), whichever is greater, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. Such costs shall constitute a maritime lien on such vessel which may be recovered in an action in rem in the district court of the United States for any district within which any vessel may be found. The United States may also bring an action against the owner or operator of such vessel in any court of competent jurisdiction to recover such costs.

(2) Except where an owner or operator of an onshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the removal of such oil or substance by the United States Government in an amount not to exceed \$50,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such facility in any court of competent jurisdiction to recover such costs. The Administrator is authorized, by regulation, after consulta-

tion with the Secretary of Commerce and the Small Business Administration, to establish reasonable and equitable classifications of those onshore facilities having a total fixed storage capacity of 1,000 barrels or less which he determines because of size, type, and location do not present a substantial risk of the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section, and apply with respect to such classifications differing limits of liability which may be less than the amount contained in this paragraph.

(3) Except where an owner or operator of an offshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the removal of such oil or substance by the United States Government in an amount not to exceed \$50,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such a facility in any court of competent jurisdiction to recover such costs.

(4) The costs of removal of oil or a hazardous substance for which the owner or operator of a vessel or onshore or offshore facility is liable under subsection (f) of this section shall include any costs or expenses incurred by the Federal Government or any State government in the restoration or replacement of natural resources damaged or destroyed as a result of a discharge of oil or a hazardous substance in violation of subsection (b) of this section.

(5) The President, or the authorized representative of any State, shall act on behalf of the public as trustee of the natural resources to recover for the costs of replacing or restoring such resources. Sums recovered shall be used to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government, or the State government.

(g) *Third party liability*

Where the owner or operator of a vessel (other than an inland oil barge) carrying oil or hazardous substances as cargo or an onshore or offshore facility which handles or stores oil or hazardous substances in bulk, from which oil or a hazardous substance is discharged in violation of subsection (b) of this section, alleges that such discharge was caused solely by an act or omission of a third party, such owner or operator shall pay to the United States Government the actual costs incurred under subsection (c)

of this section for removal of such oil or substance and shall be entitled by subrogation to all rights of the United States Government to recover such costs from such third party under this subsection. In any case where an owner or operator of a vessel, of an onshore facility, or of an offshore facility, from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section, proves that such discharge of oil or hazardous substance was caused solely by an act or omission of a third party, or was caused solely by such an act or omission in combination with an act of God, an act of war, or negligence on the part of the United States Government, such third party shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) of this section for removal of such oil or substance by the United States Government, except where such third party can prove that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of another party without regard to whether such act or omission was or was not negligent, or any combination of the foregoing clauses. If such third party was the owner or operator of a vessel which caused the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section, the liability of such third party under this subsection shall not exceed, in the case of an inland oil barge \$125 per gross ton of such barge, or \$125,000, whichever is greater, and in the case of any other vessel, \$150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, \$250,000), whichever is greater. In any other case the liability of such third party shall not exceed the limitation which would have been applicable to the owner or operator of the vessel or the onshore or offshore facility from which the discharge actually occurred if such owner or operator were liable. If the United States can show that the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section was the result of willful negligence or willful misconduct within the privity and knowledge of such third party, such third party shall be liable to the United States Government for the full amount of such removal costs. The United States may bring an action against the third party in any court of competent jurisdiction to recover such removal costs.

(h) *Rights against third parties who caused or contributed to discharge*

The liabilities established by this section shall in no way affect any rights which (1) the owner or operator of a vessel or of an onshore facility or an offshore facility may have against any third party whose acts may in any way have caused or contributed to such discharge, or (2) the United States Government may have against any third party whose actions may in any way have caused or contributed to the discharge of oil or hazardous substance.

(i) Recovery of removal costs

(1) In any case where an owner or operator of a vessel or an onshore facility or an offshore facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section acts to remove such oil or substance in accordance with regulations promulgated pursuant to this section, such owner or operator shall be entitled to recover the reasonable costs incurred in such removal upon establishing, in a suit which may be brought against the United States Government in the United States Claims Court, that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether such act or omission was or was not negligent, or of any combination of the foregoing causes.

(2) The provisions of this subsection shall not apply in any case where liability is established pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), or the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.).

(3) Any amount paid in accordance with a judgment of the United States Claims Court pursuant to this section shall be paid from the funds established pursuant to subsection (k) of this section.

(j) Regulations; penalty

(1) Consistent with the National Contingency Plan required by subsection (c)(2) of this section, as soon as practicable after October 18, 1972, and from time to time thereafter, the President shall issue regulations consistent with maritime safety and with marine and navigation laws (A) establishing methods and procedures for removal of discharged oil and hazardous substances, (B) establishing criteria for the development and implementation of local and regional oil and hazardous substance removal contingency plans, (C) establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges, and (D) governing the inspection of vessels carrying cargoes of oil and hazardous substances and the inspection of such cargoes in order to reduce the likelihood of discharges of oil from vessels in violation of this section.

(2) Any owner or operator of a vessel or an onshore facility or an offshore facility and any other person subject to any regulation issued under paragraph (1) of this subsection who fails or refuses to comply with the provisions of any such regulations, shall be liable to a civil penalty of not more than \$5,000 for each such violation. This paragraph shall not apply to any owner or operator of any vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) of subsection (b) of this section unless such owner, operator, or person in charge is otherwise subject to the jurisdiction of the United States. Each violation shall be a separate offense. The President may assess and compromise such penalty. No penalty shall be assessed until the owner, operator, or other person charged shall have been given

notice and an opportunity for a hearing on such charge. In determining the amount of the penalty, or the amount agreed upon in compromise, the gravity of the violation, and the demonstrated good faith of the owner, operator, or other person charged in attempting to achieve rapid compliance, after notification of a violation, shall be considered by the President.

(k) Authorization of appropriations; supplemental appropriations

(1) There is hereby authorized to be appropriated to a revolving fund to be established in the Treasury such sums as may be necessary to maintain such fund at a level of \$35,000,000 to carry out the provisions of subsections (c), (d), (i), and (j) of this section. Any other funds received by the United States under this section shall also be deposited in said fund for such purposes. All sums appropriated to, or deposited in, said fund shall remain available until expended.

(2) The Secretary of Transportation shall notify the Congress whenever the unobligated balance of the fund is less than \$12,000,000, and shall include in such notification a recommendation for a supplemental appropriation relating to the sums that are needed to maintain the fund at the level provided in paragraph (1).

(l) Administration

The President is authorized to delegate the administration of this section to the heads of those Federal departments, agencies, and instrumentalities which he determines to be appropriate. Any moneys in the fund established by subsection (k) of this section shall be available to such Federal departments, agencies, and instrumentalities to carry out the provisions of subsections (c) and (j) of this section. Each such department, agency, and instrumentality, in order to avoid duplication of effort, shall, whenever appropriate, utilize the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities.

(m) Boarding and inspection of vessels; arrest; execution of warrants or other process

Anyone authorized by the President to enforce the provisions of this section may, except as to public vessels, (A) board and inspect any vessel upon the navigable waters of the United States or the waters of the contiguous zone, (B) with or without a warrant arrest any person who violates the provisions of this section or any regulation issued thereunder in his presence or view, and (C) execute any warrant or other process issued by an officer or court of competent jurisdiction.

(n) Jurisdiction

The several district courts of the United States are invested with jurisdiction for any actions, other than actions pursuant to subsection (ix)(1) of this section, arising under this section. In the case of Guam and the Trust Territory of the Pacific Islands, such actions may be brought in the district court of Guam, and in the case of the Virgin Islands such actions may be brought in the district court of the Virgin Islands. In the case of American Samoa and the

Trust Territory of the Pacific Islands, such actions may be brought in the District Court of the United States for the District of Hawaii and such court shall have jurisdiction of such actions. In the case of the Canal Zone, such actions may be brought in the United States District Court for the District of the Canal Zone.

(c) *Obligation for damages unaffected; local authority not preempted; existing Federal authority not modified or affected*

(1) Nothing in this section shall affect or modify in any way the obligations of any owner or operator of any vessel, or of any owner or operator of any onshore facility or offshore facility to any person or agency under any provision of law for damages to any publicly owned or privately owned property resulting from a discharge of any oil or hazardous substance or from the removal of any such oil or hazardous substance.

(2) Nothing in this section shall be construed as preempting any State or political subdivision thereof from imposing any requirement or liability with respect to the discharge of oil or hazardous substance into any waters within such State.

(3) Nothing in this section shall be construed as affecting or modifying any other existing authority of any Federal department, agency, or instrumentality, relative to onshore or offshore facilities under this chapter or any other provision of law, or to affect any State or local law not in conflict with this section.

(g) *Financial responsibility*

(1) Any vessel over three hundred gross tons, including any barge of equivalent size, but not including any barge that is not self-propelled and that does not carry oil or hazardous substances as cargo or fuel, using any port or place in the United States or the navigable waters of the United States for any purpose shall establish and maintain under regulations to be prescribed from time to time by the President, evidence of financial responsibility of, in the case of an inland oil barge \$125 per gross ton of such barge, or \$125,000, whichever is greater, and in the case of any other vessel, \$150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, \$250,000), whichever is greater, to meet the liability to the United States which such vessel could be subjected under this section. In cases where an owner or operator owns, operates, or charters more than one such vessel, financial responsibility need only be established to meet the maximum liability to which the largest of such vessels could be subjected. Financial responsibility may be established by any one of, or a combination of, the following methods acceptable to the President: (A) evidence of insurance, (B) surety bonds, (C) qualification as a self-insurer, or (D) other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

(2) The provisions of paragraph (1) of this subsection shall be effective April 3, 1971, with respect to oil and one year after October 18, 1972, with respect to hazardous substances. The President shall delegate the responsibility to

carry out the provisions of this subsection to the appropriate agency head within sixty days after October 18, 1972. Regulations necessary to implement this subsection shall be issued within six months after October 18, 1972.

(3) Any claim for costs incurred by such vessel may be brought directly against the insurer or any other person providing evidence of financial responsibility as required under this subsection. In the case of any action pursuant to this subsection such insurer or other person shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if an action had been brought against him by the claimant, and which would have been available to him if an action had been brought against him by the owner or operator.

(4) Any owner or operator of a vessel subject to this subsection, who fails to comply with the provisions of this subsection or any regulation issued thereunder, shall be subject to a fine of not more than \$10,000.

(5) The Secretary of the Treasury may refuse the clearance required by section 91 of title 46 to any vessel subject to this subsection, which does not have evidence furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(6) The Secretary of the Department in which the Coast Guard is operated may (A) deny entry to any port or place in the United States or the navigable waters of the United States, to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection, which upon request, does not produce evidence furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(q) *Establishment of maximum limit of liability with respect to onshore or offshore facilities*

The President is authorized to establish, with respect to any class or category of onshore or offshore facilities, a maximum limit of liability under subsections (f)(2) and (3) of this section of less than \$50,000,000, but not less than \$8,000,000.

(r) *Liability limitations not to limit liability under other legislation*

Nothing in this section shall be construed to impose, or authorize the imposition of, any limitation on liability under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.).

(June 30, 1948, ch. 756, title III, § 311, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 562, and amended Dec. 28, 1973, Pub. L. 93-207, § 1(4), 87 Stat. 908; Dec. 27, 1977, Pub. L. 95-217, §§ 57, 58(a)-(g), (l), (k)-(m), 91 Stat. 1592-1598; Nov. 2, 1978, Pub. L. 95-578, § 1(b), 92 Stat. 2467; Oct. 21, 1980, Pub. L. 96-483, § 6, 94 Stat. 2362; Dec. 22, 1980, Pub. L. 96-561, title II, § 238(b), 94 Stat. 3300; Apr. 2, 1982, Pub. L. 97-164, title I, § 161(5), 96 Stat. 49.)

AMENDMENT OF SUBSEC. (b)(3)

Pub. L. 95-478, § 13(b), 14(a), Oct. 21, 1978, 94 Stat. 2303, provided that, effective on the date the MARPOL Protocol becomes effective as to the United States, subsec. (b)(3) of this section is amended by striking the words "of oil" in cl. (A) and by substituting the phrase "the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973" for the phrase "the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended". The MARPOL Protocol becomes effective as to the United States Oct. 2, 1983. See section 1901 et seq. of this title.

REFERENCES IN TEXT

For definition of Canal Zone, referred to in subsecs. (a)(5) and (n), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

The Outer Continental Shelf Lands Act, referred to in subsecs. (b)(1), (2)(A), (3), (c)(1), (d)(2), and (r), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables.

The Deepwater Port Act of 1974, referred to in subsecs. (b)(1), (2)(A), (3), (c)(1), (d)(2), and (r), is Pub. L. 93-427, Jan. 3, 1975, 89 Stat. 2126, as amended, which is classified generally to chapter 29 (§ 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.

The Magnuson Fishery Conservation and Management Act, referred to in subsecs. (b)(1), (2)(A), (3), and (c)(1), is Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, which is classified principally to chapter 38 (§ 1801 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 16 and Tables.

The date of enactment of this paragraph, referred to in subsec. (b)(2)(B), probably means the date of enactment of Pub. L. 95-576, which amended subsec. (b)(2)(B) and which was approved Nov. 2, 1978.

The penalty enacted in subclause (bb) of clause (III) of subparagraph (B) of subsection (b)(2) of section 311 of Public Law 92-500, referred to in subsec. (b)(2)(B), probably means the penalty provision of subsec. (b)(2)(B)(III)(bb) of this section as added by Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 864, prior to the amendment to subsec. (b)(2)(B) by section 1(b)(2) of Pub. L. 95-576. Prior to amendment, subsec. (b)(2)(B)(III)(bb) read as follows: "a penalty determined by the number of units discharged multiplied by the amount established for such unit under clause (iv) of this subparagraph, but such penalty shall not be more than \$5,000,000 in the case of a discharge from a vessel and \$500,000 in the case of a discharge from an onshore or offshore facility."

The Intervention on the High Seas Act, referred to in subsec. (d), is Pub. L. 93-248, Feb. 5, 1974, 88 Stat. 8, as amended, which is classified generally to chapter 28 (§ 1471 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1471 of this title and Tables.

AMENDMENTS

1982—Subsec. (l)(1), (3), Pub. L. 97-184 substituted "Claims Court" for "Court of Claims".

1980—Subsecs. (b)(1), (2)(A), (3), (c)(1), Pub. L. 96-361 substituted "Magnuson Fishery Conservation and Management Act" for "Fishery Conservation and Management Act of 1976".

Subsec. (k), Pub. L. 96-483 designated existing provisions as par. (1), and added par. (3).

1978—Subsec. (a)(2), Pub. L. 95-576, § 1(b)(1), excluded discharges described in cl. (A) to (C) from the term "discharge".

Subsec. (a)(17), Pub. L. 95-576, § 1(b)(2), added par. (17).

Subsec. (b)(2)(B), Pub. L. 95-576, § 1(b)(2), substituted requirement that a study be made respecting methods, mechanisms, and procedures for creating incentives to achieve higher standard of care in management and movement of hazardous substances, including consideration of enumerated items, and a report made to Congress within 18 months after Nov. 2, 1978, for provisions concerning actual removability of any designated hazardous substance, liability during two year period commencing Oct. 18, 1972 based on toxicity, degradability, and dispersal characteristics of the substance limited to \$50,000 and without limitation in cases of willful negligence or willful misconduct, liability after such two year period ranging from \$500 to \$5,000 based on toxicity, etc., or liability for penalty determined by number of units discharged multiplied by amount established for the unit limited to \$5,000,000 in the case of a discharge from a vessel and to \$500,000 in the case of a discharge from onshore or offshore facility, establishment by regulation of a unit of measurement based upon the usual trade practice for each designated hazardous substance and establishment for such unit a fixed monetary amount ranging from \$100 to \$1,000 based on toxicity, etc.

Subsec. (b)(3), Pub. L. 95-576, § 1(b)(4), substituted "such quantities as may be harmful" for "harmful quantities".

Subsec. (b)(4), Pub. L. 95-576, § 1(b)(5), struck out "to be issued as soon as possible after October 18, 1972," following "regulation" and substituted "substances" for "substance" and "discharge of which may be harmful" for "discharge of which, at such times, locations, circumstances, and conditions, will be harmful".

Subsec. (b)(5), Pub. L. 95-576, § 1(b)(6), inserted after "otherwise subject to the jurisdiction of the United States" the phrase "at the time of the discharge".

Subsec. (b)(6)(A) to (E), Pub. L. 95-576, § 1(b)(7), designated existing provisions as subpar. (A), and in subpar. (A) as so designated, inserted "at the time of the discharge" following "jurisdiction of the United States", and added subpars. (B) to (E).

1977—Subsec. (a)(11), Pub. L. 95-217, § 59(k), added "and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters," following "United States".

Subsec. (a)(15), (16), Pub. L. 95-217, § 59(d)(1), added pars. (15) and (16).

Subsec. (b)(1), Pub. L. 95-217, § 59(a)(1), added reference to activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976).

Subsec. (b)(2)(A), Pub. L. 95-217, § 59(a)(2), added reference to activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976).

Subsec. (b)(2)(B)(v), Pub. L. 95-217, § 57, added cl. (v).

Subsec. (b)(3), Pub. L. 95-217, § 59(a)(3), (4), designated a part of the existing provisions preceding cl. (A) as cl. (1) and added cl. (II), and, in cl. (A), added "or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act

of 1978) following "waters of the contiguous zone" and struck out "article IV of" preceding "the International Convention for the Prevention of Pollution of the Sea by Oil, 1954".

Subsec. (b)(4). Pub. L. 95-217, § 58(a)(5), struck out provisions under which, in the case of the discharge of oil into or upon the waters of the contiguous zone, only those discharges which threatened the fishery resources of the contiguous zone or threatened to pollute or contribute to the pollution of the territory or the territorial sea of the United States could be determined to be harmful.

Subsec. (b)(5). Pub. L. 95-217, § 58(a)(6), added cls. (A), (B), and (C) between "Any such person" and "who fails to notify".

Subsec. (b)(6). Pub. L. 95-217, § 58(a)(7), (8), substituted "Any owner, operator, or person in charge of any onshore facility, or offshore facility" for "Any owner or operator of any vessel, onshore facility, or offshore facility" in the provision relating to violations of par. (3) of this subsection, and added provisions directing the assessment of a civil penalty of not more than \$8,000 for each offense by the Secretary of the department in which the Coast Guard is operating to be assessed against any owner, operator, or person in charge of any vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(I) of this subsection, and any owner, operator, or person in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(II) who is otherwise subject to the jurisdiction of the United States.

Subsec. (c)(1). Pub. L. 95-217, § 58(b), (c)(1), added "or there is a substantial threat of such discharge," following "Whenever any oil or a hazardous substance is discharged," and "or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976) following "waters of the contiguous zone."

Subsec. (c)(3)(D). Pub. L. 95-217, § 58(c), substituted "and imminent threats of such discharges to the appropriate State and Federal agencies" for "to the appropriate Federal agency."

Subsec. (d). Pub. L. 95-217, § 58(c)(2), added "or under the Intervention on the High Seas Act (or the convention defined in section 2(3) thereof) following "Any expense incurred under this subsection".

Subsec. (f)(1). Pub. L. 95-217, § 58(d)(2), substituted "in the case of an inland oil barge \$125 per gross ton of such barge, or \$125,000, whichever is greater, and in the case of any other vessel, \$150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, \$250,000), whichever is greater," for "\$100 per gross ton of such vessel or \$14,000,000, whichever is lesser."

Subsec. (f)(2). Pub. L. 95-217, § 58(d)(3), substituted "\$80,000,000" for "\$8,000,000".

Subsec. (f)(3). Pub. L. 95-217, § 58(d)(4), substituted "\$80,000,000" for "\$8,000,000".

Subsec. (f)(4), (5). Pub. L. 95-217, § 58(e), added para. (4) and (5).

Subsec. (g). Pub. L. 95-217, § 58(d)(3), (f), substituted "in the case of an inland oil barge \$125 per gross ton of such barge, or \$125,000, whichever is greater, and in the case of any other vessel, \$150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, \$250,000), whichever is greater" for "\$100 per gross ton of such vessel or \$14,000,000, whichever is the lesser" in the existing provisions and added provision under which, where the owner or operator of a vessel (other than an inland oil barge) carrying oil or hazardous substances as cargo or an onshore or offshore facility which handles or stores oil or hazardous substances in bulk, from which oil or a hazardous substance is discharged in violation of subsec. (b) of this section, alleges that the discharge

was caused solely by an act or omission of a third party, the owner or operator must pay to the United States Government the actual costs incurred under subsec. (c) of this section for removal of the oil or substance and shall be entitled by subrogation to all rights of the United States Government to recover the costs from the third party under this subsection.

Subsec. (i)(2). Pub. L. 95-217, § 58(m), added reference to the Deepwater Port Act of 1974.

Subsec. (j)(2). Pub. L. 95-217, § 58(c)(3), added provision that subsec. (j)(2) shall not apply to any owner or operator of any vessel from which oil or a hazardous substance is discharged in violation of subsec. (b)(3)(H) of this section unless the owner, operator, or person in charge is otherwise subject to the jurisdiction of the United States.

Subsec. (k). Pub. L. 95-217, § 58(f), substituted "such sums as may be necessary to maintain such fund at a level of \$35,000,000" for "not to exceed \$35,000,000".

Subsec. (p)(1). Pub. L. 95-217, § 58(d)(4), substituted "in the case of an inland oil barge \$125 per gross ton of such barge, or \$125,000, whichever is greater, and in the case of any other vessel, \$150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, \$250,000), whichever is greater," for "\$100 per gross ton, or \$14,000,000 whichever is the lesser."

Subsecs. (q), (r). Pub. L. 95-217, § 58(i), added subsec. (q) and (r).

1973-Subsec. (f)(1). Pub. L. 93-207, § 1(4)(A), substituted reference to subsec. (b)(3) of this section for reference to subsec. (b)(2) of this section.

Subsec. (f)(2). Pub. L. 93-207, § 1(4)(A), (B), substituted reference to subsec. (b)(3) of this section for reference to subsec. (b)(2) of this section in two places, and Administrator for Secretary.

Subsec. (f)(3). Pub. L. 93-207, § 1(4)(A), substituted reference to subsec. (b)(3) of this section for reference to subsec. (b)(2) of this section.

Subsec. (g). Pub. L. 93-207, § 1(4)(C), substituted reference to subsec. (b)(3) of this section for reference to subsec. (b)(2) of this section in three places.

Subsec. (l). Pub. L. 93-207, § 1(4)(C), substituted reference to subsec. (b)(3) of this section for reference to subsec. (b)(2) of this section in par. (1).

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 403 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-561 effective 15 days after Dec. 22, 1980, see section 238 of Pub. L. 96-561, set out as a Short Title of 1980 Amendment note under section 1801 of Title 16, Conservation.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 58(h) of Pub. L. 95-217 provided that: "The amendments made by paragraphs (5) and (6) of subsection (d) of this section (substituting "\$80,000,000" for "\$8,000,000" in subsec. (f)(2) and substituting "\$80,000,000" for "\$8,000,000" in subsec. (f)(3) of this section) shall take effect 180 days after the date of enactment of the Clean Water Act of 1977 (Dec. 27, 1977)."

TRANSFER OF FUNCTIONS

Enforcement functions of Administrator or other official of the Environmental Protection Agency under this section relating to spill prevention, containment and countermeasure plans with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of

the date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(a), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 3, Government Organization and Employees.

ALLOWABLE DELAY IN ESTABLISHING FINANCIAL RESPONSIBILITY FOR INCREASE IN AMOUNTS UNDER 1977 AMENDMENT

Section 58(j) of Pub. L. 95-217 provided that: "No vessel subject to the increased amounts which result from the amendments made by subsections (d)(2), (d)(3), and (d)(4) of this section [amending subsections (f)(1), (g), and (p)(1) of this section] shall be required to establish any evidence of financial responsibility under section 311(p) of the Federal Water Pollution Control Act [subsec. (p) of this section] for such increased amounts before October 1, 1978."

Ex. Ord. No. 11735. ASSIGNMENT OF PRESIDENTIAL FUNCTIONS

Ex. Ord. No. 11735, Aug. 3, 1973, 38 F.R. 21243, provided:

By virtue of the authority vested in me by section 311 of the Federal Water Pollution Control Act, as amended, by the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500; 86 Stat. 816 at 862; 33 U.S.C. 1331), hereinafter referred to as the act, by section 301 of title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

SECTION 1. Administrator of the Environmental Protection Agency. The Administrator of the Environmental Protection Agency is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the following:

(1) the authority of the President under subsections (b)(3) and (b)(4) of section 311 of the act [subsec. (b)(3) and (b)(4) of this section] relating to the determination of those quantities of oil and hazardous substances the discharge of which, at such times, locations, circumstances, and conditions, will be harmful to the public health or welfare of the United States and those which will not be harmful;

(2) the authority of the President under subsection (e)(2)(C) of section 311 of the act [subsec. (e)(2)(C) of this section], relating to identification of dispersants and other chemicals to be used;

(3) the authority of the President under subsection (e) of section 311 of the act [subsec. (e) of this section], relating to determinations of imminent and substantial threat because of actual or threatened discharges of oil or hazardous substances from non-transportation-related onshore and offshore facilities, and relating to securing relief necessary to abate such actual or threatened discharges through court action; and

(4) the authority of the President under subsection (j)(1)(C) of section 311 of the act [subsec. (j)(1)(C) of this section], relating to the establishment of procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from non-transportation-related onshore and offshore facilities, and to contain such discharges.

Sec. 2. Secretary of Department in which the Coast Guard is Operating. The Secretary of the Department in which the Coast Guard is operating is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the following:

(1) the authority of the President under subsection (e) of section 311 of the act [subsec. (e) of this section], relating to determinations of imminent and substantial threat because of actual or threatened discharges of oil or hazardous substances from transportation-related onshore and offshore facilities, and relating to securing relief necessary to abate such actual or threatened discharges through court action;

(2) the authority of the President under subsection (j)(1)(C) of section 311 of the act [subsec. (j)(1)(C) of this section], relating to the establishment of procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and transportation-related onshore and offshore facilities, and to contain such discharges;

(3) the authority of the President under subsection (j)(1)(D) of section 311 of the act [subsec. (j)(1)(D) of this section], relating to the inspection of vessels carrying cargoes of oil and hazardous substances and the inspection of such cargoes;

(4) the authority to administer the revolving fund established pursuant to subsection (k) of section 311 of the act [subsec. (k) of this section]; and

(5) the authority under subsection (m) of section 311 of the act [subsec. (m) of this section], relating to the boarding and inspection of vessels, the arrest of persons violating section 311 [this section], and the execution of warrants or other process pursuant to that section.

Sec. 3. Federal Maritime Commission. The Federal Maritime Commission is designated and empowered to exercise, without the approval, ratification, or other action of the President, the following:

(1) the authority of the President under subsection (p)(1) of section 311 of the act [subsec. (p)(1) of this section], relating to the issuance of regulations governing evidence of financial responsibility for vessels to meet liability to the United States; and

(2) the authority under subsection (p)(2) of section 311 of the act [subsec. (p)(2) of this section], relating to the administration of subsection (d) [subsec. (d) of this section].

Sec. 4. Council on Environmental Quality. The Council on Environmental Quality is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the authority under subsection (e)(2) of section 311 of the act [subsec. (e)(2) of this section], providing for the preparation, publication, revision or amendment of a National Contingency Plan for the removal of oil and hazardous substance discharges (hereinafter referred to as the National Contingency Plan).

Sec. 5. Other Assignments.

(a) The head of each Federal department and agency having responsibilities under the National Contingency Plan (36 FR 16218), as now or hereafter amended, is designated and empowered to exercise, without the approval, ratification, or other action of the President, in accordance with that plan, the authority under subsection (e)(1) of section 311 of the act [subsec. (e)(1) of this section], relating to the removal of oil and hazardous substances discharged into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone.

(b) The Administrator of the Environmental Protection Agency and the Secretary of the Department in which the Coast Guard is operating, respectively, in and for the waters and areas for which each has responsibility for providing or furnishing on-scene coordinators under the National Contingency Plan, are designated and empowered to exercise, without approval, ratification, or other action of the President, the following:

(1) the authority under subsection (e)(2)(C) of section 311 of the act [subsec. (e)(2)(C) of this section], relating to the determination of major parts for establishment of emergency task forces;

(2) the authority under subsection (d) of section 311 of the act [subsec. (d) of this section], relating to the coordination and direction of the removal or elimination of threats of pollution hazards from discharges, or imminent discharges, of oil or hazardous substances, and the removal and destruction of vessels;

(3) the authority of the President under subsection (j)(1)(A) of section 311 of the act [subsec. (j)(1)(A) of

this section], relating to the establishment of methods and procedures for the removal of discharged oil and hazardous substances; and

(4) the authority of the President under subsection (j)(1)(B) of section 311 of the act (subsec. (j)(1)(B) of this section), relating to the establishment of criteria for the development and implementation of local and regional oil and hazardous substance removal contingency plans.

(c) The Administrator of the Environmental Protection Agency and the Secretary of the Department in which the Coast Guard is operating are designated and empowered to exercise, without the approval, ratification, or other action of the President, the authority of the President under section 311(j)(2) (subsec. (j)(2) of this section) with respect to assessing and compromising civil penalties in connection with enforcement of the respective regulations issued by each pursuant to this order.

Sec. 9. *Consultation.* Authorities and functions delegated or assigned by this order shall be exercised subject to consultation with the Secretaries of departments and the heads of agencies with operating or regulatory responsibilities which may be significantly affected.

Sec. 7. *Agency to Receive Notices of Discharges of Oil or Hazardous Substances.* The Coast Guard is hereby designated the "appropriate agency" for the purpose of receiving the notice of discharge of oil or hazardous substances required by subsection (b)(5) of section 311 of the act (subsec. (b)(5) of this section). The Commandant of the Coast Guard shall issue regulations implementing this designation.

Sec. 8. Without derogating from any action heretofore taken thereunder, Executive Order No. 11549 of July 20, 1970, is hereby superseded.

RICHARD NIXON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1014, 1206, 1314, 1318, 1376, 1402, 1488, 1517 of this title; title 43 sections 1683, 1811, 1821; title 42 sections 9601, 9602, 9605, 9604, 9611, 9631, 9651, 9662, 9664; title 46 section 391a.

§ 1322. Marine sanitation devices

(a) Definitions

For the purpose of this section, the term—

(1) "new vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the navigable waters, the construction of which is initiated after promulgation of standards and regulations under this section;

(2) "existing vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the navigable waters, the construction of which is initiated before promulgation of standards and regulations under this section;

(3) "public vessel" means a vessel owned or bareboat chartered and operated by the United States, by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;

(4) "United States" includes the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Canal Zone, and the Trust Territory of the Pacific Islands;

(5) "marine sanitation device" includes any equipment for installation on board a vessel which is designed to receive, retain, treat, or

discharge sewage, and any process to treat such sewage;

(6) "sewage" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes except that, with respect to commercial vessels on the Great Lakes, such term shall include graywater;

(7) "manufacturer" means any person engaged in the manufacturing, assembling, or importation of marine sanitation devices or of vessels subject to standards and regulations promulgated under this section;

(8) "person" means an individual, partnership, firm, corporation, or association, but does not include an individual on board a public vessel;

(9) "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping;

(10) "commercial vessels" means those vessels used in the business of transporting property for compensation or hire, or in transporting property in the business of the owner, lessee, or operator of the vessel;

(11) "graywater" means galley, bath, and shower water.

(b) Federal standards of performance

(1) As soon as possible, after October 18, 1972, and subject to the provisions of section 1284(f) of this title, the Administrator, after consultation with the Secretary of the department in which the Coast Guard is operating, after giving appropriate consideration to the economic costs involved, and within the limits of available technology, shall promulgate Federal standards of performance for marine sanitation devices (hereafter in this section referred to as "standards") which shall be designed to prevent the discharge of untreated or inadequately treated sewage into or upon the navigable waters from new vessels and existing vessels, except vessels not equipped with installed toilet facilities. Such standards and standards established under subsection (c)(1)(B) of this section shall be consistent with maritime safety and the marine and navigation laws and regulations and shall be coordinated with the regulations issued under this subsection by the Secretary of the department in which the Coast Guard is operating. The Secretary of the department in which the Coast Guard is operating shall promulgate regulations, which are consistent with standards promulgated under this subsection and subsection (c) of this section and with maritime safety and the marine and navigation laws and regulations governing the design, construction, installation, and operation of any marine sanitation device on board such vessels.

(2) Any existing vessel equipped with a marine sanitation device on the date of promulgation of initial standards and regulations under this section, which device is in compliance with such initial standards and regulations, shall be deemed in compliance with this section until such time as the device is replaced or is found not to be in compliance with such initial standards and regulations.

(c) Initial standards; effective dates; revision; waiver

(1)(A) Initial standards and regulations under this section shall become effective for new vessels two years after promulgation; and for existing vessels five years after promulgation. Revisions of standards and regulations shall be effective upon promulgation, unless another effective date is specified, except that no revision shall take effect before the effective date of the standard or regulation being revised.

(B) The Administrator shall, with respect to commercial vessels on the Great Lakes, establish standards which require at a minimum the equivalent of secondary treatment as defined under section 1314(d) of this title. Such standards and regulations shall take effect for existing vessels after such time as the Administrator determines to be reasonable for the upgrading of marine sanitation devices to attain such standard.

(2) The Secretary of the department in which the Coast Guard is operating with regard to his regulatory authority established by this section, after consultation with the Administrator, may distinguish among classes, type, and sizes of vessels as well as between new and existing vessels, and may waive applicability of standards and regulations as necessary or appropriate for such classes, types, and sizes of vessels (including existing vessels equipped with marine sanitation devices on the date of promulgation of the initial standards required by this section), and, upon application, for individual vessels.

(d) Vessels owned and operated by the United States

The provisions of this section and the standards and regulations promulgated hereunder apply to vessels owned and operated by the United States unless the Secretary of Defense finds that compliance would not be in the interest of national security. With respect to vessels owned and operated by the Department of Defense, regulations under the last sentence of subsection (b)(1) of this section and certifications under subsection (g)(2) of this section shall be promulgated and issued by the Secretary of Defense.

(e) Pre-promulgation consultation

Before the standards and regulations under this section are promulgated, the Administrator and the Secretary of the department in which the Coast Guard is operating shall consult with the Secretary of State; the Secretary of Health and Human Services; the Secretary of Defense; the Secretary of the Treasury; the Secretary of Commerce; other interested Federal agencies; and the States and industries interested; and otherwise comply with the requirements of section 553 of title 5.

(f) Regulation by States or political subdivisions thereof; complete prohibition upon discharge of sewage

(1) After the effective date of the initial standards and regulations promulgated under this section, no State or political subdivision thereof shall adopt or enforce any statute or regulation of such State or political subdivision with respect to the design, manufacture, or installation or use of any marine sanitation

device on any vessel subject to the provisions of this section.

(2) If, after promulgation of the initial standards and regulations and prior to their effective date, a vessel is equipped with a marine sanitation device in compliance with such standards and regulations and the installation and operation of such device is in accordance with such standards and regulations, such standards and regulations shall, for the purposes of paragraph (1) of this subsection, become effective with respect to such vessel on the date of such compliance.

(3) After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such State require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply. Upon application of the State, the Administrator shall make such determination within 90 days of the date of such application.

(4)(A) If the Administrator determines upon application by a State that the protection and enhancement of the quality of specified waters within such State requires such a prohibition, he shall by regulation completely prohibit the discharge from a vessel of any sewage (whether treated or not) into such waters.

(B) Upon application by a State, the Administrator shall, by regulation, establish a drinking water intake zone in any waters within such State and prohibit the discharge of sewage from vessels within that zone.

(g) Sales limited to certified devices; certification of test device; recordkeeping; reports

(1) No manufacturer of a marine sanitation device shall sell, offer for sale, or introduce or deliver for introduction in interstate commerce, or import into the United States for sale or resale any marine sanitation device manufactured after the effective date of the standards and regulations promulgated under this section unless such device is in all material respects substantially the same as a test device certified under this subsection.

(2) Upon application of the manufacturer, the Secretary of the department in which the Coast Guard is operating shall so certify a marine sanitation device if he determines, in accordance with the provisions of this paragraph, that it meets the appropriate standards and regulations promulgated under this section. The Secretary of the department in which the Coast Guard is operating shall test or require such testing of the device in accordance with procedures set forth by the Administrator as to standards of performance and for such other purposes as may be appropriate. If the Secretary of the department in which the Coast Guard is operating determines that the device

is satisfactory from the standpoint of safety and any other requirements of maritime law or regulation, and after consideration of the design, installation, operation, material, or other appropriate factors, he shall certify the device. Any device manufactured by such manufacturer which is in all material respects substantially the same as the certified test device shall be deemed to be in conformity with the appropriate standards and regulations established under this section.

(3) Every manufacturer shall establish and maintain such records, make such reports, and provide such information as the Administrator or the Secretary of the department in which the Coast Guard is operating may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this section and regulations issued thereunder and shall, upon request of an officer or employee duly designated by the Administrator or the Secretary of the department in which the Coast Guard is operating, permit such officer or employee at reasonable times to have access to and copy such records. All information reported to or otherwise obtained by the Administrator or the Secretary of the Department in which the Coast Guard is operating or their representatives pursuant to this subsection which contains or relates to a trade secret or other matter referred to in section 1905 of title 18 shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this section. This paragraph shall not apply in the case of the construction of a vessel by an individual for his own use.

(k) Sale and resale of properly equipped vessels; operability of certified marine sanitation devices

After the effective date of standards and regulations promulgated under this section, it shall be unlawful—

(1) for the manufacturer of any vessel subject to such standards and regulations to manufacture for sale, to sell or offer for sale, or to distribute for sale or resale any such vessel unless it is equipped with a marine sanitation device which is in all material respects substantially the same as the appropriate test device certified pursuant to this section;

(2) for any person, prior to the sale or delivery of a vessel subject to such standards and regulations to the ultimate purchaser, wrongfully to remove or render inoperative any certified marine sanitation device or element of design of such device installed in such vessel;

(3) for any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information required under this section; and

(4) for a vessel subject to such standards and regulations to operate on the navigable waters of the United States, if such vessel is not equipped with an operable marine sanitation device certified pursuant to this section.

(l) Jurisdiction to restrain violations; contempt

The district courts of the United States shall have jurisdiction to restrain violations of sub-

section (g)(1) of this section and subsections (h)(1) through (3) of this section. Actions to restrain such violations shall be brought by, and in, the name of the United States. In case of contumacy or refusal to obey a subpoena served upon any person under this subsection, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(j) Penalties

Any person who violates subsection (g)(1) of this section or clause (1) or (2) of subsection (h) of this section shall be liable to a civil penalty of not more than \$5,000 for each violation. Any person who violates clause (4) of subsection (h) of this section or any regulation issued pursuant to this section shall be liable to a civil penalty of not more than \$2,000 for each violation. Each violation shall be a separate offense. The Secretary of the department in which the Coast Guard is operating may assess and compromise any such penalty. No penalty shall be assessed until the person charged shall have been given notice and an opportunity for a hearing on such charge. In determining the amount of the penalty, or the amount agreed upon in compromise, the gravity of the violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance, after notification of a violation, shall be considered by said Secretary.

(k) Enforcement authority

The provisions of this section shall be enforced by the Secretary of the department in which the Coast Guard is operating and he may utilize by agreement, with or without reimbursement, law enforcement officers or other personnel and facilities of the Administrator, other Federal agencies, or the States to carry out the provisions of this section.

(i) Boarding and inspection of vessels; execution of warrants and other process

Anyone authorized by the Secretary of the department in which the Coast Guard is operating to enforce the provisions of this section may, except as to public vessels, (1) board and inspect any vessel upon the navigable waters of the United States and (2) execute any warrant or other process issued by an officer or court of competent jurisdiction.

(m) Enforcement in United States possessions

In the case of Guam and the Trust Territory of the Pacific Islands, actions arising under this section may be brought in the district court of Guam, and in the case of the Virgin Islands such actions may be brought in the district court of the Virgin Islands. In the case of American Samoa and the Trust Territory of the Pacific Islands, such actions may be brought in the District Court of the United States for the District of Hawaii and such court

shall have jurisdiction of such actions. In the case of the Canal Zone, such actions may be brought in the District Court for the District of the Canal Zone.

(June 30, 1948, ch. 758, title III, § 312, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 871, and amended Dec. 27, 1977, Pub. L. 95-217, § 59, 91 Stat. 1598; Oct. 17, 1979, Pub. L. 96-88, title V, § 509(b), 93 Stat. 695.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in subsecs. (a)(4) and (m), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1977—Subsec. (m)(6). Pub. L. 95-217, § 59(a), added "except that, with respect to commercial vessels on the Great Lakes, such term shall include graywater" following "receive or retain body wastes".

Subsec. (a)(10), (11). Pub. L. 95-217, § 59(b), added pars. (10) and (11).

Subsec. (b)(1). Pub. L. 95-217, § 59(c), added references to standards established under subsec. (c)(1)(B) of this section and to standards promulgated under subsec. (c) of this section.

Subsec. (c)(1). Pub. L. 95-217, § 59(d), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (f)(4). Pub. L. 95-217, § 59(e), designated existing provisions as subpar. (A) and added subpar. (B).

CHANGE OF NAME

"Secretary of Health and Human Services" was substituted for "Secretary of Health, Education, and Welfare" in subsec. (e) pursuant to section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1234, 1362, 1402 of this title.

§ 1323. Federal facilities pollution control

(a) Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants, and each officer, agent, or employee thereof in the performance of his official duties, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity including the payment of reasonable service charges. The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits and any other requirement, whatsoever), (B) to the exercise of any Federal, State, or local administrative authority, and (C) to any process and sanction, whether enforced in Federal, State, or local courts or in any other manner. This subsection shall apply notwithstanding any immunity of such agencies, officers, agents, or employees under any law or rule of law. Nothing in this section shall be construed to prevent any department, agency, or instrumentality of the Federal Government, or any offi-

cer, agent, or employee thereof in the performance of his official duties, from removing to the appropriate Federal district court any proceeding to which the department, agency, or instrumentality or officer, agent, or employee thereof is subject pursuant to this section, and any such proceeding may be removed in accordance with section 1441 et seq. of title 28. No officer, agent, or employee of the United States shall be personally liable for any civil penalty arising from the performance of his official duties, for which he is not otherwise liable, and the United States shall be liable only for those civil penalties arising under Federal law or imposed by a State or local court to enforce an order or the process of such court. The President may exempt any effluent source of any department, agency, or instrumentality in the executive branch from compliance with any such a requirement if he determines it to be in the paramount interest of the United States to do so; except that no exemption may be granted from the requirements of section 1316 or 1317 of this title. No such exemptions shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting such exemption. In addition to any such exemption of a particular effluent source, the President may, if he determines it to be in the paramount interest of the United States to do so, issue regulations exempting from compliance with the requirements of this section any weaponry, equipment, aircraft, vessels, vehicles, or other classes or categories of property, and access to such property, which are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State and which are uniquely military in nature. The President shall reconsider the need for such regulations at three-year intervals.

(b)(1) The Administrator shall coordinate with the head of each department, agency, or instrumentality of the Federal Government having jurisdiction over any property or facility utilizing federally owned wastewater facilities to develop a program of cooperation for utilizing wastewater control systems utilizing those innovative treatment processes and techniques for which guidelines have been promulgated under section 1314(d)(3) of this title. Such program shall include an inventory of property and facilities which could utilize such processes and techniques.

(2) Construction shall not be initiated for facilities for treatment of wastewater at any Federal property or facility after September 30, 1979, if alternative methods for wastewater treatment at such property or facility utilizing

Innovative treatment processes and techniques, including but not limited to methods utilizing recycle and reuse techniques and land treatment are not utilized, unless the life cycle cost of the alternative treatment works exceeds the life cycle cost of the most cost effective alternative by more than 15 per centum. The Administrator may waive the application of this paragraph in any case where the Administrator determines it to be in the public interest, or that compliance with this paragraph would interfere with the orderly compliance with conditions of a permit issued pursuant to section 1342 of this title.

(June 30, 1948, ch. 758, title III, § 313, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 875, and amended Dec. 27, 1977, Pub. L. 95-217, §§ 60, 61(a), 91 Stat. 1597, 1598.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-217, §§ 60, 61(a), designated existing provisions as subsec. (a) and, in subsec. (a) as so designated, added provisions making officers, agents, or employees of Federal departments, agencies, or instrumentalities subject to Federal, State, interstate, and local requirements, administrative authority, process, and sanctions respecting the control and abatement of water pollution in the same manner and to the same extent as non-governmental entities, including the payment of reasonable service charges, added provisions covering Federal employee liability, and added provisions relating to military source exemptions and the issuance of regulations covering those exemptions.

Subsec. (b). Pub. L. 95-217, § 60, added subsec. (b).

EXEMPTION FOR FORT ALLEN IN PUERTO RICO

For provisions relating to the exemption for Fort Allen in Puerto Rico, in its use as temporary housing for Haitian refugees, from compliance with provisions of this chapter relating to effluent sources located at Fort Allen, see sections 1-101 and 1-106 of Ex. Ord. No. 12327, Oct. 1, 1981, 46 P.R. 48893, set out as a note under section 2901 of Title 22, Foreign Relations and Intercourse.

FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

For provisions relating to the responsibility of the head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12058, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of Title 42, The Public Health and Welfare.

EXECUTIVE ORDER NO. 11258

Ex. Ord. No. 11258, Nov. 17, 1968, 30 P.R. 14483, which related to prevention, control, and abatement of water pollution by federal activities, was superseded by Ex. Ord. No. 11286, July 2, 1968, 31 P.R. 9261.

EXECUTIVE ORDER NO. 11286

Ex. Ord. No. 11286, July 2, 1968, 31 P.R. 9261, which provided for prevention, control, and abatement of water pollution from federal activities, was superseded by Ex. Ord. No. 11607, Feb. 4, 1970, 35 P.R. 2573.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1365 of this title.

§ 1324. Clean lakes

(a) Requirements imposed upon States

Each State shall prepare or establish, and submit to the Administrator for his approval—

(1) an identification and classification according to eutrophic condition of all publicly owned fresh water lakes in such State;

(2) procedures, processes, and methods (including land use requirements), to control sources of pollution of such lakes; and

(3) methods and procedures, in conjunction with appropriate Federal agencies, to restore the quality of such lakes.

(b) Financial assistance to States

The Administrator shall provide financial assistance to States in order to carry out methods and procedures approved by him under this section. The Administrator shall provide financial assistance to States to prepare the identification and classification surveys required in subsection (a)(1) of this section.

(c) Maximum amount of grant; authorization of appropriations

(1) The amount granted to any State for any fiscal year under this section shall not exceed 70 per centum of the funds expended by such State in such year for carrying out approved methods and procedures under this section.

(2) There is authorized to be appropriated \$50,000,000 for the fiscal year ending June 30, 1973; \$100,000,000 for the fiscal year 1974; \$150,000,000 for the fiscal year 1975; \$50,000,000 for fiscal year 1977; \$60,000,000 for fiscal year 1978; \$60,000,000 for fiscal year 1979; \$60,000,000 for fiscal year 1980; \$30,000,000 for fiscal year 1981, and \$30,000,000 for fiscal year 1982 for grants to States under this section which such sums shall remain available until expended. The Administrator shall provide for an equitable distribution of such sums to the States with approved methods and procedures under this section.

(June 30, 1948, ch. 758, title III, § 314, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 875, and amended Dec. 27, 1977, Pub. L. 95-217, §§ 4(f), 62(a), 91 Stat. 1597, 1598; Oct. 21, 1980, Pub. L. 96-483, § 1(f), 94 Stat. 2360.)

AMENDMENTS

1980—Subsec. (c)(2). Pub. L. 96-483 added authorization of \$30,000,000 for each of fiscal years 1981 and 1982.

1977—Subsec. (b). Pub. L. 95-217, § 62(a), added provision directing the Administrator to provide financial assistance to States to prepare the identification and classification surveys required in subsec. (a)(1) of this section.

Subsec. (c)(2). Pub. L. 95-217, § 4(f), substituted "\$150,000,000 for the fiscal year 1975, \$50,000,000 for fiscal year 1977, \$60,000,000 for fiscal year 1978, \$60,000,000 for fiscal year 1979, and \$60,000,000 for fiscal year 1980" for "and \$150,000,000 for the fiscal year 1975".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1376 of this title.

§ 1325. National Study Commission

(a) Establishment

There is established a National Study Commission, which shall make a full and complete investigation and study of all of the technologi-

cal aspects of achieving, and all aspects of the total economic, social, and environmental effects of achieving or not achieving, the effluent limitations and goals set forth for 1983 in section 1311(b)(2) of this title.

(b) Membership; chairman

Such Commission shall be composed of fifteen members, including five members of the Senate, who are members of the Environment and Public Works committee, appointed by the President of the Senate, five members of the House, who are members of the Public Works and Transportation committee, appointed by the Speaker of the House, and five members of the public appointed by the President. The Chairman of such Commission shall be elected from among its members.

(c) Contract authority

In the conduct of such study, the Commission is authorized to contract with the National Academy of Sciences and the National Academy of Engineering (acting through the National Research Council), the National Institute of Ecology, Brookings Institution, and other non-governmental entities, for the investigation of matters within their competence.

(d) Cooperation of departments, agencies, and instrumentalities of executive branch

The heads of the departments, agencies and instrumentalities of the executive branch of the Federal Government shall cooperate with the Commission in carrying out the requirements of this section, and shall furnish to the Commission such information as the Commission deems necessary to carry out this section.

(e) Report to Congress

A report shall be submitted to the Congress of the results of such investigation and study, together with recommendations, not later than three years after October 18, 1972.

(f) Compensation and allowances

The members of the Commission who are not officers or employees of the United States, while attending conferences or meetings of the Commission or while otherwise serving at the request of the Chairman shall be entitled to receive compensation at a rate not in excess of the maximum rate of pay for Grade GS-18, as provided in the General Schedule under section 5332 of title 5, including traveltime and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence as authorized by law for persons in the Government service employed intermittently.

(g) Appointment of personnel

In addition to authority to appoint personnel subject to the provisions of title 5 governing appointments in the competitive service, and to pay such personnel in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, the Commission shall have authority to enter into contracts with private or public organizations who shall furnish the Commission with such administrative and technical personnel as may be nec-

essary to carry out the purpose of this section. Personnel furnished by such organizations under this subsection are not, and shall not be considered to be, Federal employees for any purposes, but in the performance of their duties shall be guided by the standards which apply to employees of the legislative branches under rules 41 and 43 of the Senate and House of Representatives, respectively.

(h) Authorization of appropriation

There is authorized to be appropriated, for use in carrying out this section, not to exceed \$17,250,000.

(June 30, 1948, ch. 758, title III, § 315, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 875, and amended Dec. 28, 1973, Pub. L. 93-207, § 1(5), 87 Stat. 908; Jan. 2, 1975, Pub. L. 93-592, § 5, 88 Stat. 1925; Mar. 23, 1976, Pub. L. 94-238, 90 Stat. 250; H. Res. 988, Oct. 8, 1974; S. Res. 4, Feb. 4, 1977.)

REFERENCES IN TEXT

Travel expenses, including per diem in lieu of subsistence as authorized by law, referred to subsec. (f), probably refers to the allowances authorized by section 5703 of Title 5, Government Organization and Employees.

The General Schedule, referred to in subsec. (g), is set out under section 5332 of Title 5.

AMENDMENTS

1976—Subsec. (h), Pub. L. 94-238 substituted "\$17,250,000" for "\$17,000,000".

1976—Subsec. (h), Pub. L. 93-592 substituted "\$17,000,000" for "\$15,000,000".

1973—Subsecs. (g), (h), Pub. L. 93-207 added subsec. (g) and redesignated former subsec. (g) as (h).

CHANGE OF NAME

The Committee on Public Works of the Senate was abolished and replaced by the Committee on Environment and Public Works of the Senate, effective Feb. 11, 1977. See Rule XXV of the Standing Rules of the Senate, as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

The Committee on Public Works of the House of Representatives was changed to the Committee on Public Works and Transportation of the House of Representatives, effective Jan. 3, 1976, by House Resolution 988, 93d Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1311, 1376 of this title.

§ 1326. Thermal discharges

(a) Effluent limitations that will assure protection and propagation of balanced, indigenous population of shellfish, fish, and wildlife

With respect to any point source otherwise subject to the provisions of section 1311 of this title or section 1316 of this title, whenever the owner or operator of any such source, after opportunity for public hearing, can demonstrate to the satisfaction of the Administrator (or, if appropriate, the State) that any effluent limitation proposed for the control of the thermal component of any discharge from such source will require effluent limitations more stringent than necessary to assure the protection and

propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is to be made, the Administrator (or, if appropriate, the State) may impose an effluent limitation under such sections for such plant, with respect to the thermal component of such discharge (taking into account the interaction of such thermal component with other pollutants), that will assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on that body of water.

(b) Cooling water intake structures

Any standard established pursuant to section 1311 of this title or section 1318 of this title and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.

(c) Period of protection from more stringent effluent limitations following discharge point source modification commenced after October 18, 1972

Notwithstanding any other provision of this chapter, any point source of a discharge having a thermal component, the modification of which point source is commenced after October 18, 1972, and which, as modified, meets effluent limitations established under section 1313 of this title or, if more stringent, effluent limitations established under section 1313 of this title and which effluent limitations will assure protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in or on the water into which the discharge is made, shall not be subject to any more stringent effluent limitation with respect to the thermal component of its discharge during a ten year period beginning on the date of completion of such modification or during the period of depreciation or amortization of such facility for the purpose of section 167 or 169 (or both) of title 26, whichever period ends first.

(June 30, 1948, ch. 758, title III, § 316, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 876.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1354, 1313 of this title.

§ 1327. Omitted

CODIFICATION

Section, act June 30, 1948, ch. 758, title III, § 317, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 877, authorized the Administrator to investigate and study the feasibility of alternate methods of financing the cost of preventing, controlling, and abating pollution as directed by the Water Quality Improvement Act of 1970 and to report to Congress, not later than two years after Oct. 18, 1972, the results of his investigation and study accompanied by his recommendations for financing these programs for the fiscal years beginning after 1976.

§ 1328. Aquaculture

(a) Authority to permit discharge of specific pollutants

The Administrator is authorized, after public hearings, to permit the discharge of a specific

pollutant or pollutants under controlled conditions associated with an approved aquaculture project under Federal or State supervision pursuant to section 1342 of this title.

(b) Procedures and guidelines

The Administrator shall by regulation establish any procedures and guidelines which the Administrator deems necessary to carry out this section. Such regulations shall require the application to such discharge of each criterion, factor, procedure, and requirement applicable to a permit issued under section 1342 of this title, as the Administrator determines necessary to carry out the objective of this chapter.

(c) State administration

Each State desiring to administer its own permit program within its jurisdiction for discharge of a specific pollutant or pollutants under controlled conditions associated with an approved aquaculture project may do so if upon submission of such program the Administrator determines such program is adequate to carry out the objective of this chapter.

(June 30, 1948, ch. 758, title III, § 318, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 877, and amended Dec. 27, 1977, Pub. L. 95-217, § 63, 91 Stat. 1599.)

AMENDMENTS

1977—Subsec. (a), Pub. L. 95-217 added "pursuant to section 1342 of this title" following "Federal or State supervision".

Subsec. (b), Pub. L. 95-217 struck out ", not later than January 1, 1974," following "The Administrator shall by regulation" in existing provisions and added provisions that the regulations require the application to the discharge of each criterion, factor, procedure, and requirement applicable to a permit issued under section 1342 of this title, as the Administrator determines necessary to carry out the objectives of this chapter.

Subsec. (c), Pub. L. 95-217 added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1311, 1319, 1342 of this title.

SUBCHAPTER IV—PERMITS AND LICENSES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1313 of this title.

§ 1341. Certification

(a) Compliance with applicable requirements; application; procedures; license suspension

(1) Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of sections 1311,

1312, 1313, 1316, and 1317 of this title. In the case of any such activity for which there is not an applicable effluent limitation or other limitation under sections 1311(b) and 1312 of this title, and there is not an applicable standard under sections 1316 and 1317 of this title, the State shall so certify, except that any such certification shall not be deemed to satisfy section 1371(c) of this title. Such State or interstate agency shall establish procedures for public notice in the case of all applications for certification by it and, to the extent it deems appropriate, procedures for public hearings in connection with specific applications. In any case where a State or interstate agency has no authority to give such a certification, such certification shall be from the Administrator. If the State, interstate agency, or Administrator, as the case may be, fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application. No license or permit shall be granted until the certification required by this section has been obtained or has been waived as provided in the preceding sentence. No license or permit shall be granted if certification has been denied by the State, interstate agency, or the Administrator, as the case may be.

(2) Upon receipt of such application and certification the licensing or permitting agency shall immediately notify the Administrator of such application and certification. Whenever such a discharge may affect, as determined by the Administrator, the quality of the waters of any other State, the Administrator within thirty days of the date of notice of application for such Federal license or permit shall so notify such other State, the licensing or permitting agency, and the applicant. If, within sixty days after receipt of such notification, such other State determines that such discharge will affect the quality of its waters so as to violate any water quality requirements in such State, and within such sixty-day period notifies the Administrator and the licensing or permitting agency in writing of its objection to the issuance of such license or permit and requests a public hearing on such objection, the licensing or permitting agency shall hold such a hearing. The Administrator shall at such hearing submit his evaluation and recommendations with respect to any such objection to the licensing or permitting agency. Such agency, based upon the recommendations of such State, the Administrator, and upon any additional evidence, if any, presented to the agency at the hearing, shall condition such license or permit in such manner as may be necessary to insure compliance with applicable water quality requirements. If the imposition of conditions cannot insure such compliance such agency shall not issue such license or permit.

(3) The certification obtained pursuant to paragraph (1) of this subsection with respect to the construction of any facility shall fulfill the requirements of this subsection with respect to certification in connection with any other Federal license or permit required for the oper-

ation of such facility unless, after notice to the certifying State, agency, or Administrator, as the case may be, which shall be given by the Federal agency to whom application is made for such operating license or permit, the State, or if appropriate, the interstate agency or the Administrator, notifies such agency within sixty days after receipt of such notice that there is no longer reasonable assurance that there will be compliance with the applicable provisions of sections 1311, 1312, 1313, 1316, and 1317 of this title because of changes since the construction license or permit certification was issued in (A) the construction or operation of the facility, (B) the characteristics of the waters into which such discharge is made, (C) the water quality criteria applicable to such waters or (D) applicable effluent limitations or other requirements. This paragraph shall be inapplicable in any case where the applicant for such operating license or permit has failed to provide the certifying State, or, if appropriate, the interstate agency or the Administrator, with notice of any proposed changes in the construction or operation of the facility with respect to which a construction license or permit has been granted, which changes may result in violation of section 1311, 1312, 1313, 1316, or 1317 of this title.

(4) Prior to the initial operation of any federally licensed or permitted facility or activity which may result in any discharge into the navigable waters and with respect to which a certification has been obtained pursuant to paragraph (1) of this subsection, which facility or activity is not subject to a Federal operating license or permit, the licensee or permittee shall provide an opportunity for such certifying State, or, if appropriate, the interstate agency or the Administrator to review the manner in which the facility or activity shall be operated or conducted for the purposes of assuring that applicable effluent limitations or other limitations or other applicable water quality requirements will not be violated. Upon notification by the certifying State, or if appropriate, the interstate agency or the Administrator that the operation of any such federally licensed or permitted facility or activity will violate applicable effluent limitations or other limitations or other water quality requirements such Federal agency may, after public hearing, suspend such license or permit. If such license or permit is suspended, it shall remain suspended until notification is received from the certifying State, agency, or Administrator, as the case may be, that there is reasonable assurance that such facility or activity will not violate the applicable provisions of section 1311, 1312, 1313, 1316, or 1317 of this title.

(5) Any Federal license or permit with respect to which a certification has been obtained under paragraph (1) of this subsection may be suspended or revoked by the Federal agency issuing such license or permit upon the entering of a judgment under this chapter that such facility or activity has been operated in violation of the applicable provisions of section 1311, 1312, 1313, 1316, or 1317 of this title.

(6) Except with respect to a permit issued under section 1342 of this title, in any case where actual construction of a facility has been lawfully commenced prior to April 3, 1970, no certification shall be required under this subsection for a license or permit issued after April 3, 1970, to operate such facility, except that any such license or permit issued without certification shall terminate April 3, 1973, unless prior to such termination date the person having such license or permit submits to the Federal agency which issued such license or permit a certification and otherwise meets the requirements of this section.

(b) **Compliance with other provisions of law setting applicable water quality requirements**

Nothing in this section shall be construed to limit the authority of any department or agency pursuant to any other provision of law to require compliance with any applicable water quality requirements. The Administrator shall, upon the request of any Federal department or agency, or State or interstate agency, or applicant, provide, for the purpose of this section, any relevant information on applicable effluent limitations, or other limitations, standards, regulations, or requirements, or water quality criteria, and shall, when requested by any such department or agency or State or interstate agency, or applicant, comment on any methods to comply with such limitations, standards, regulations, requirements, or criteria.

(c) **Authority of Secretary of the Army to permit use of spoil disposal areas by Federal licensees or permittees**

In order to implement the provisions of this section, the Secretary of the Army, acting through the Chief of Engineers, is authorized, if he deems it to be in the public interest, to permit the use of spoil disposal areas under his jurisdiction by Federal licensees or permittees, and to make an appropriate charge for such use. Moneys received from such licensees or permittees shall be deposited in the Treasury as miscellaneous receipts.

(d) **Limitations and monitoring requirements of certification**

Any certification provided under this section shall set forth any effluent limitations and other limitations, and monitoring requirements necessary to assure that any applicant for a Federal license or permit will comply with any applicable effluent limitations and other limitations, under section 1311 or 1312 of this title, standard of performance under section 1316 of this title, or prohibition, effluent standard, or pretreatment standard under section 1317 of this title, and with any other appropriate requirement of State law set forth in such certification, and shall become a condition on any Federal license or permit subject to the provisions of this section.

(June 30, 1948, ch. 758, title IV, § 401, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 877, and amended Dec. 27, 1977, Pub. L. 95-217, §§ 61(b), 64, 91 Stat. 1598, 1599.)

AMENDMENTS

1977—Subsec. (a) Pub. L. 95-217 added reference to section 1313 of this title in pars. (1), (3), (4), and (5), struck out par. (6) which had provided that no Federal agency be deemed an applicant for the purposes of this subsection, and redesignated former par. (7) as (6).

ADMINISTRATION OF REFUSE ACT PERMIT PROGRAM

Administration of Refuse Act Permit Program to regulate discharge of pollutants and other refuse matter into navigable waters of the United States or their tributaries, see Ex. Ord. No. 11574, Dec. 23, 1970, 35 F.R. 19827, set out as a note under section 407 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1314, 1365, 1371 of this title.

§ 1342. National pollutant discharge elimination system

(a) **Permits for discharge of pollutants**

(1) Except as provided in sections 1328 and 1344 of this title, the Administrator may, after opportunity for public hearing issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a) of this title, upon condition that such discharge will meet either all applicable requirements under sections 1311, 1312, 1316, 1317, 1318, and 1343 of this title, or prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this chapter.

(2) The Administrator shall prescribe conditions for such permits to assure compliance with the requirements of paragraph (1) of this subsection, including conditions on data and information collection, reporting, and such other requirements as he deems appropriate.

(3) The permit program of the Administrator under paragraph (1) of this subsection, and permits issued thereunder, shall be subject to the same terms, conditions, and requirements as apply to a State permit program and permits issued thereunder under subsection (b) of this section.

(4) All permits for discharges into the navigable waters issued pursuant to section 407 of this title shall be deemed to be permits issued under this subchapter, and permits issued under this subchapter shall be deemed to be permits issued under section 407 of this title, and shall continue in force and effect for their term unless revoked, modified, or suspended in accordance with the provisions of this chapter.

(5) No permit for a discharge into the navigable waters shall be issued under section 407 of this title after October 18, 1972. Each application for a permit under section 407 of this title, pending on October 18, 1972, shall be deemed to be an application for a permit under this section. The Administrator shall authorize a State, which he determines has the capability of administering a permit program which will carry out the objectives of this chapter to issue permits for discharges into the navigable waters within the jurisdiction of such State. The Administrator may exercise the authority granted

him by the preceding sentence only during the period which begins on October 18, 1972, and ends either on the ninetieth day after the date of the first promulgation of guidelines required by section 1314(1)(2) of this title, or the date of approval by the Administrator of a permit program for such State under subsection (b) of this section, whichever date first occurs, and no such authorization to a State shall extend beyond the last day of such period. Each such permit shall be subject to such conditions as the Administrator determines are necessary to carry out the provisions of this chapter. No such permit shall issue if the Administrator objects to such issuance.

(b) State permit programs

At any time after the promulgation of the guidelines required by subsection (1)(2) of section 1314 of this title, the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program. The Administrator shall approve each submitted program unless he determines that adequate authority does not exist:

(1) To issue permits which—

(A) apply, and insure compliance with, any applicable requirements of sections 1311, 1312, 1316, 1317, and 1343 of this title;

(B) are for fixed terms not exceeding five years; and

(C) can be terminated or modified for cause including, but not limited to, the following:

(i) violation of any condition of the permit;

(ii) obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts;

(iii) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;

(D) control the disposal of pollutants into wells;

(2)(A) To issue permits which apply, and insure compliance with, all applicable requirements of section 1318 of this title; or

(B) To inspect, monitor, enter, and require reports to at least the same extent as required in section 1318 of this title;

(3) To insure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application;

(4) To insure that the Administrator receives notice of each application (including a copy thereof) for a permit;

(5) To insure that any State (other than the permitting State), whose waters may be affected by the issuance of a permit may submit written recommendations to the permitting State (and the Administrator) with respect to any permit application and, if any part of such written recommendations are not accepted by the permitting State, that the permitting State will notify such affected State (and the Administrator) in writing of its failure to so accept such recommendations together with its reasons for so doing;

(6) To insure that no permit will be issued if, in the judgment of the Secretary of the Army acting through the Chief of Engineers, after consultation with the Secretary of the department in which the Coast Guard is operating, anchorage and navigation of any of the navigable waters would be substantially impaired thereby;

(7) To abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement;

(8) To insure that any permit for a discharge from a publicly owned treatment works includes conditions to require the identification in terms of character and volume of pollutants of any significant source introducing pollutants subject to pretreatment standards under section 1317(b) of this title into such works and a program to assure compliance with such pretreatment standards by each such source, in addition to adequate notice to the permitting agency of (A) new introductions into such works of pollutants from any source which would be a new source as defined in section 1316 of this title if such source were discharging pollutants, (B) new introductions of pollutants into such works from a source which would be subject to section 1311 of this title if it were discharging such pollutants, or (C) a substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit. Such notice shall include information on the quality and quantity of effluent to be introduced into such treatment works and any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works; and

(9) To insure that any industrial user of any publicly owned treatment works will comply with sections 1284(b), 1317, and 1318 of this title.

(c) Suspension of Federal program upon submission of State program; withdrawal of approval of State program

(1) Not later than ninety days after the date on which a State has submitted a program (or revision thereof) pursuant to subsection (b) of this section, the Administrator shall suspend the issuance of permits under subsection (a) of this section as to those navigable waters subject to such program unless he determines that the State permit program does not meet the requirements of subsection (b) of this section or does not conform to the guidelines issued under

section 1314(i)(2) of this title. If the Administrator so determines, he shall notify the State of any revisions or modifications necessary to conform to such requirements or guidelines.

(2) Any State permit program under this section shall at all times be in accordance with this section and guidelines promulgated pursuant to section 1314(i)(2) of this title.

(3) Whenever the Administrator determines after public hearing that a State is not administering a program approved under this section in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw approval of such program. The Administrator shall not withdraw approval of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

(d) Notification of Administrator

(1) Each State shall transmit to the Administrator a copy of each permit application received by such State and provide notice to the Administrator of every action related to the consideration of such permit application, including each permit proposed to be issued by such State.

(2) No permit shall issue (A) if the Administrator within ninety days of the date of his notification under subsection (b)(5) of this section objects in writing to the issuance of such permit, or (B) if the Administrator within ninety days of the date of transmittal of the proposed permit by the State objects in writing to the issuance of such permit as being outside the guidelines and requirements of this chapter. Whenever the Administrator objects to the issuance of a permit under this paragraph such written objection shall contain a statement of the reasons for such objection and the effluent limitations and conditions which such permit would include if it were issued by the Administrator.

(3) The Administrator may, as to any permit application, waive paragraph (2) of this subsection.

(4) In any case where, after December 27, 1977, the Administrator, pursuant to paragraph (2) of this subsection, objects to the issuance of a permit, on request of the State, a public hearing shall be held by the Administrator on such objection. If the State does not resubmit such permit revised to meet such objection within 30 days after completion of the hearing, or, if no hearing is requested within 90 days after the date of such objection, the Administrator may issue the permit pursuant to subsection (a) of this section for such source in accordance with the guidelines and requirements of this chapter.

(e) Waiver of notification requirement

In accordance with guidelines promulgated pursuant to subsection (i)(2) of section 1314 of this title, the Administrator is authorized to waive the requirements of subsection (d) of this section at the time he approves a program pursuant to subsection (b) of this section for any category (including any class, type, or size within such category) of point sources within the State submitting such program.

(f) Point source categories

The Administrator shall promulgate regulations establishing categories of point sources which he determines shall not be subject to the requirements of subsection (d) of this section in any State with a program approved pursuant to subsection (b) of this section. The Administrator may distinguish among classes, types, and sizes within any category of point sources.

(g) Other regulations for safe transportation, handling, carriage, storage, and stowage of pollutants

Any permit issued under this section for the discharge of pollutants into the navigable waters from a vessel or other floating craft shall be subject to any applicable regulations promulgated by the Secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants.

(h) Violation of permit conditions; restriction or prohibition upon introduction of pollutant by source not previously utilizing treatment works

In the event any condition of a permit for discharges from a treatment works (as defined in section 1292 of this title) which is publicly owned is violated, a State with a program approved under subsection (b) of this section or the Administrator, where no State program is approved or where the Administrator determines pursuant to section 1319(a) of this title that a State with an approved program has not commenced appropriate enforcement action with respect to such permit, may proceed in a court of competent jurisdiction to restrict or prohibit the introduction of any pollutant into such treatment works by a source not utilizing such treatment works prior to the finding that such condition was violated.

(i) Federal enforcement not limited

Nothing in this section shall be construed to limit the authority of the Administrator to take action pursuant to section 1319 of this title.

(j) Public information

A copy of each permit application and each permit issued under this section shall be available to the public. Such permit application or permit, or portion thereof, shall further be available on request for the purpose of reproduction.

(k) Compliance with permits

Compliance with a permit issued pursuant to this section shall be deemed compliance, for purposes of sections 1319 and 1365 of this title, with sections 1311, 1312, 1316, 1317, and 1343 of this title, except any standard imposed under section 1317 of this title for a toxic pollutant injurious to human health. Until December 31, 1974, in any case where a permit for discharge has been applied for pursuant to this section, but final administrative disposition of such application has not been made, such discharge shall not be a violation of (1) section 1311, 1316, or 1342 of this title, or (2) section 407 of this title, unless the Administrator or other plaintiff proves that final administrative disposition

of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application. For the 180-day period beginning on October 18, 1972, in the case of any point source discharging any pollutant or combination of pollutants immediately prior to such date which source is not subject to section 407 of this title, the discharge by such source shall not be a violation of this chapter if such a source applies for a permit for discharge pursuant to this section within such 180-day period.

(i) Irrigation return flows

The Administrator shall not require a permit under this section for discharges composed entirely of return flows from irrigated agriculture, nor shall the Administrator directly or indirectly require any State to require such a permit.

(June 30, 1948, ch. 758, title IV, § 402, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 830, and amended Dec. 27, 1977, Pub. L. 95-217, §§ 33(c), 50, 54(c)(1), 65, 68, 91 Stat. 1577, 1588, 1591, 1599, 1600.)

AMENDMENTS

1977—Subsec. (a)(5), Pub. L. 95-217, § 50, substituted "section 1314(h)(2)" for "section 1314(h)(2)".

Subsec. (b), Pub. L. 95-217, § 50, substituted in the material preceding par. (1) "subsection (h)(2) of section 1314" for "subsection (h)(2) of section 1314".

Subsec. (b)(8), Pub. L. 95-217, § 54(c)(1), added reference to the identification in terms of character and volume of pollutants of any significant source introducing pollutants subject to pretreatment standards under section 1317(b) of this title into treatment works and programs to assure compliance with pretreatment standards by each source.

Subsec. (c)(1), (2), Pub. L. 95-217, § 50, substituted "section 1314(h)(2)" for "section 1314(h)(2)".

Subsec. (d)(2), Pub. L. 95-217, § 48(b), added provision requiring that, whenever the Administrator objects to the issuance of a permit under subsec. (d)(2) of this section, the written objection contain a statement of the reasons for the objection and the effluent limitations and conditions which the permit would include if it were issued by the Administrator.

Subsec. (d)(4), Pub. L. 95-217, § 65(4), added par. (4).

Subsec. (e), Pub. L. 95-217, § 50, substituted "subsection (h)(2) of section 1314" for "subsection (h)(2) of section 1314".

Subsec. (h), Pub. L. 95-217, § 65, substituted "where no State program is approved or where the Administrator determines pursuant to section 1319(a) of this title that a State with an approved program has not commenced appropriate enforcement action with respect to such permit," for "where no State program is approved."

Subsec. (i), Pub. L. 95-217, § 32(c), added subsec. (i).

TRANSFER OF FUNCTIONS

Enforcement functions of Administrator or other official of the Environmental Protection Agency under this section relating to compliance with national pollutant discharge elimination system permits with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of the date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(a), 202(a), 44 P.R. 33663, 33696, 93 Stat. 1371, 1376, effective July 1, 1979, set out in the

Appendix to Title 5, Government Organization and Employees.

ALLOWABLE DELAY IN MODIFYING EXISTING APPROVED STATE PERMIT PROGRAMS TO CONFORM TO 1977 AMENDMENT

Section 54(c)(2) of Pub. L. 95-217 provided that any State permit program approved under this section before Dec. 27, 1977, which required modification to conform to the amendment made by section 54(c)(1) of Pub. L. 95-217, which amended subsec. (b)(8) of this section, not be required to be modified before the end of the one year period which began on Dec. 27, 1977, unless in order to make the required modification a State must amend or enact a law in which case such modification not be required for such State before the end of the two year period which began on Dec. 27, 1977.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1251, 1284, 1285, 1288, 1311, 1314, 1316, 1319, 1321, 1323, 1328, 1341, 1343, 1344, 1346, 1365, 1369, 1371, 1373 of this title; title 42 sections 6903, 9601.

§ 1343. Ocean discharge criteria

(a) Issuance of permits

No permit under section 1342 of this title for a discharge into the territorial sea, the waters of the contiguous zone, or the oceans shall be issued, after promulgation of guidelines established under subsection (c) of this section, except in compliance with such guidelines. Prior to the promulgation of such guidelines, a permit may be issued under such section 1342 of this title if the Administrator determines it to be in the public interest.

(b) Waiver

The requirements of subsection (d) of section 1342 of this title may not be waived in the case of permits for discharges into the territorial sea.

(c) Guidelines for determining degradation of waters

(1) The Administrator shall, within one hundred and eighty days after October 18, 1972 (and from time to time thereafter), promulgate guidelines for determining the degradation of the waters of the territorial seas, the contiguous zone, and the oceans, which shall include:

(A) the effect of disposal of pollutants on human health or welfare, including but not limited to plankton, fish, shellfish, wildlife, shorelines, and beaches;

(B) the effect of disposal of pollutants on marine life including the transfer, concentration, and dispersal of pollutants or their by-products through biological, physical, and chemical processes; changes in marine ecosystem diversity, productivity, and stability; and species and community population changes;

(C) the effect of disposal, of pollutants on esthetic, recreation, and economic values;

(D) the persistence and permanence of the effects of disposal of pollutants;

(E) the effect of the disposal of varying rates, of particular volumes and concentrations of pollutants;

(F) other possible locations and methods of disposal or recycling of pollutants including land-based alternatives; and

(G) the effect on alternate uses of the oceans, such as mineral exploitation and scientific study.

(2) In any event where insufficient information exists on any proposed discharge to make a reasonable judgment on any of the guidelines established pursuant to this subsection no permit shall be issued under section 1342 of this title.

(June 30, 1948, ch. 758, title IV, § 403, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 883.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1284, 1288, 1311, 1314, 1342, 1344 of this title.

§ 1344. Permits for dredged or fill material

(a) Discharge into navigable waters at specified disposal sites

The Secretary may issue permits, after notice and opportunity for public hearings for the discharge of dredged or fill material into the navigable waters at specified disposal sites. Not later than the fifteenth day after the date an applicant submits all the information required to complete an application for a permit under this subsection, the Secretary shall publish the notice required by this subsection.

(b) Specification for disposal sites

Subject to subsection (c) of this section, each such disposal site shall be specified for each such permit by the Secretary of the Army (1) through the application of guidelines developed by the Administrator, in conjunction with the Secretary, which guidelines shall be based upon criteria comparable to the criteria applicable to the territorial seas, the contiguous zone, and the ocean under section 1343(c) of this title, and (2) in any case where such guidelines under clause (1) alone would prohibit the specification of a site, through the application additionally of the economic impact of the site on navigation and anchorage.

(c) Denial or restriction of use of defined areas as disposal sites

The Administrator is authorized to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and he is authorized to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Before making such determination, the Administrator shall consult with the Secretary. The Administrator shall set forth in writing and make public his findings and his reasons for making any determination under this subsection.

(d) "Secretary" defined

The term "Secretary" as used in this section means the Secretary of the Army, acting through the Chief of Engineers.

(e) General permits on State, regional, or nationwide basis

(1) In carrying out his functions relating to the discharge of dredged or fill material under this section, the Secretary may, after notice and opportunity for public hearing, issue general permits on a State, regional, or nationwide basis for any category of activities involving discharges of dredged or fill material if the Secretary determines that the activities in such category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment. Any general permit issued under this subsection shall (A) be based on the guidelines described in subsection (b)(1) of this section, and (B) set forth the requirements and standards which shall apply to any activity authorized by such general permit.

(2) No general permit issued under this subsection shall be for a period of more than five years after the date of its issuance and such general permit may be revoked or modified by the Secretary if, after opportunity for public hearing, the Secretary determines that the activities authorized by such general permit have an adverse impact on the environment or such activities are more appropriately authorized by individual permits.

(f) Non-prohibited discharge of dredged or fill material

(1) Except as provided in paragraph (2) of this subsection, the discharge of dredged or fill material—

(A) from normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;

(B) for the purpose of maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures;

(C) for the purpose of construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches;

(D) for the purpose of construction of temporary sedimentation basins on a construction site which does not include placement of fill material into the navigable waters;

(E) for the purpose of construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained, in accordance with best management practices, to assure that flow and circulation patterns and chemical and biological characteristics of the navigable waters are not impaired, that the reach of the navigable waters is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized;

(F) resulting from any activity with respect to which a State has an approved program under section 1338(b)(4) of this title which meets the requirements of subparagraphs (B) and (C) of such section.

is not prohibited by or otherwise subject to regulation under this section or section 1311(a) or 1342 of this title (except for effluent standards or prohibitions under section 1317 of this title).

(2) Any discharge of dredged or fill material into the navigable waters incidental to any activity having as its purpose bringing an area of the navigable waters into a use to which it was not previously subject, where the flow or circulation of navigable waters may be impaired or the reach of such waters be reduced, shall be required to have a permit under this section.

(g) State administration

(1) The Governor of any State desiring to administer its own individual and general permit program for the discharge of dredged or fill material into the navigable waters (other than those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark, or mean higher high water mark on the west coast, including wetlands adjacent thereto) within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program.

(2) Not later than the tenth day after the date of the receipt of the program and statement submitted by any State under paragraph (1) of this subsection, the Administrator shall provide copies of such program and statement to the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service.

(3) Not later than the ninetieth day after the date of the receipt by the Administrator of the program and statement submitted by any State, under paragraph (1) of this subsection, the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, shall submit any comments with respect to such program and statement to the Administrator in writing.

(h) Determination of State's authority to issue permits under State program; approval; notification; transfers to State program

(1) Not later than the one-hundred-twentieth day after the date of the receipt by the Administrator of a program and statement submitted by any State under paragraph (1) of this subsection, the Administrator shall determine,

taking into account any comments submitted by the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, pursuant to subsection (g) of this section, whether such State has the following authority with respect to the issuance of permits pursuant to such program:

(A) To issue permits which—

(i) apply, and assure compliance with, any applicable requirements of this section, including, but not limited to, the guidelines established under subsection (b)(1) of this section, and sections 1317 and 1343 of this title;

(ii) are for fixed terms not exceeding five years; and

(iii) can be terminated or modified for cause including, but not limited to, the following:

(I) violation of any condition of the permit;

(II) obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts;

(III) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

(B) To issue permits which apply, and assure compliance with, all applicable requirements of section 1318 of this title, or to inspect, monitor, enter, and require reports to at least the same extent as required in section 1318 of this title.

(C) To assure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application.

(D) To assure that the Administrator receives notice of each application (including a copy thereof) for a permit.

(E) To assure that any State (other than the permitting State), whose waters may be affected by the issuance of a permit may submit written recommendations to the permitting State (and the Administrator) with respect to any permit application and, if any part of such written recommendations are not accepted by the permitting State, that the permitting State will notify such affected State (and the Administrator) in writing of its failure to so accept such recommendations together with its reasons for so doing.

(F) To assure that no permit will be issued if, in the judgment of the Secretary, after consultation with the Secretary of the department in which the Coast Guard is operating, anchorage and navigation of any of the navigable waters would be substantially impaired thereby.

(G) To abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement.

(H) To assure continued coordination with Federal and Federal-State water-related planning and review processes.

(2) If, with respect to a State program submitted under subsection (g)(1) of this section, the Administrator determines that such State—

(A) has the authority set forth in paragraph (1) of this subsection, the Administrator shall approve the program and so notify (1) such State and (2) the Secretary, who upon subsequent notification from such State that it is administering such program, shall suspend the issuance of permits under subsections (a) and (c) of this section for activities with respect to which a permit may be issued pursuant to such State program; or

(B) does not have the authority set forth in paragraph (1) of this subsection, the Administrator shall so notify such State, which notification shall also describe the revisions or modifications necessary so that such State may resubmit such program for a determination by the Administrator under this subsection.

(3) If the Administrator fails to make a determination with respect to any program submitted by a State under subsection (g)(1) of this section within one-hundred-twenty days after the date of the receipt of such program, such program shall be deemed approved pursuant to paragraph (2)(A) of this subsection and the Administrator shall so notify such State and the Secretary who, upon subsequent notification from such State that it is administering such program, shall suspend the issuance of permits under subsection (a) and (c) of this section for activities with respect to which a permit may be issued by such State.

(4) After the Secretary receives notification from the Administrator under paragraph (2) or (3) of this subsection that a State permit program has been approved, the Secretary shall transfer any applications for permits pending before the Secretary for activities with respect to which a permit may be issued pursuant to such State program to such State for appropriate action.

(5) Upon notification from a State with a permit program approved under this subsection that such State intends to administer and enforce the terms and conditions of a general permit issued by the Secretary under subsection (c) of this section with respect to activities in such State to which such general permit applies, the Secretary shall suspend the administration and enforcement of such general permit with respect to such activities.

(1) **Withdrawal of approval**

Whenever the Administrator determines after public hearing that a State is not administering a program approved under subsection (h)(2)(A) of this section, in accordance with this section, including, but not limited to, the guidelines established under subsection (b)(1) of this section, the Administrator shall so notify the State, and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days after the date of the receipt of such notification, the Administrator shall (1) withdraw approval of such program until the Administrator determines such corrective action has been taken, and (2) notify the Secretary that the Secretary shall resume the pro-

gram for the issuance of permits under subsections (a) and (c) of this section for activities with respect to which the State was issuing permits and that such authority of the Secretary shall continue in effect until such time as the Administrator makes the determination described in clause (1) of this subsection and such State again has an approved program.

(j) Copies of applications for State permits and proposed general permits to be transmitted to Administrator

Each State which is administering a permit program pursuant to this section shall transmit to the Administrator (1) a copy of each permit application received by such State and provide notice to the Administrator of every action related to the consideration of such permit application, including each permit proposed to be issued by such State, and (2) a copy of each proposed general permit which such State intends to issue. Not later than the tenth day after the date of the receipt of such permit application or such proposed general permit, the Administrator shall provide copies of such permit application or such proposed general permit to the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service. If the Administrator intends to provide written comments to such State with respect to such permit application or such proposed general permit, he shall so notify such State not later than the thirtieth day after the date of the receipt of such application or such proposed general permit and provide such written comments to such State, after consideration of any comments made in writing with respect to such application or such proposed general permit by the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, not later than the ninetieth day after the date of such receipt. If such State is so notified by the Administrator, it shall not issue the proposed permit until after the receipt of such comments from the Administrator, or after such ninetieth day, whichever first occurs. Such State shall not issue such proposed permit after such ninetieth day if it has received such written comments in which the Administrator objects (A) to the issuance of such proposed permit and such proposed permit is one that has been submitted to the Administrator pursuant to subsection (h)(1)(E) of this section, or (B) to the issuance of such proposed permit as being outside the requirements of this section, including, but not limited to, the guidelines developed under subsection (b)(1) of this section unless it modifies such proposed permit in accordance with such comments. Whenever the Administrator objects to the issuance of a permit under the preceding sentence such written objection shall contain a statement of the reasons for such objection and the conditions which such permit would include if it were issued by the Administrator. In any case where the Administrator objects to the issuance of a permit, on request of the State, a public hearing shall be held by the Administrator on such objection. If the State does not re-

submit such permit revised to meet such objection within 30 days after completion of the hearing or, if no hearing is requested within 90 days after the date of such objection, the Secretary may issue the permit pursuant to subsection (a) or (e) of this section, as the case may be, for such source in accordance with the guidelines and requirements of this chapter.

(k) Waiver

In accordance with guidelines promulgated pursuant to subsection (i)(2) of section 1314 of this title, the Administrator is authorized to waive the requirements of subsection (j) of this section at the time of the approval of a program pursuant to subsection (h)(2)(A) of this section for any category (including any class, type, or size within such category) of discharge within the State submitting such program.

(l) Categories of discharges not subject to requirements

The Administrator shall promulgate regulations establishing categories of discharges which he determines shall not be subject to the requirements of subsection (j) of this section in any State with a program approved pursuant to subsection (h)(2)(A) of this section. The Administrator may distinguish among classes, types, and sizes within any category of discharges.

(m) Comments on permit applications or proposed general permits by Secretary of the Interior acting through Director of United States Fish and Wildlife Service

Not later than the ninetieth day after the date on which the Secretary notifies the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service that (1) an application for a permit under subsection (a) of this section has been received by the Secretary, or (2) the Secretary proposes to issue a general permit under subsection (e) of this section, the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, shall submit any comments with respect to such application or such proposed general permit in writing to the Secretary.

(n) Enforcement authority not limited

Nothing in this section shall be construed to limit the authority of the Administrator to take action pursuant to section 1319 of this title.

(o) Public availability of permits and permit applications

A copy of each permit application and each permit issued under this section shall be available to the public. Such permit application or portion thereof, shall further be available on request for the purpose of reproduction.

(p) Compliance

Compliance with a permit issued pursuant to this section, including any activity carried out pursuant to a general permit issued under this section, shall be deemed compliance, for purposes of sections 1319 and 1365 of this title, with sections 1311, 1317, and 1343 of this title.

(q) Minimization of duplication, needless paperwork, and delays in issuance; agreements

Not later than the one-hundred-eightieth day after December 27, 1977, the Secretary shall

enter into agreements with the Administrator, the Secretaries of the Departments of Agriculture, Commerce, Interior, and Transportation, and the heads of other appropriate Federal agencies to minimize, to the maximum extent practicable, duplication, needless paperwork, and delays in the issuance of permits under this section. Such agreements shall be developed to assure that, to the maximum extent practicable, a decision with respect to an application for a permit under subsection (a) of this section will be made not later than the ninetieth day after the date the notice for such application is published under subsection (a) of this section.

(r) Federal projects specifically authorized by Congress

The discharge of dredged or fill material as part of the construction of a Federal project specifically authorized by Congress, whether prior to or on or after December 27, 1977, is not prohibited by or otherwise subject to regulation under this section, or section 1311(a) or 1342 of this title (except for effluent standards or prohibitions under section 1317 of this title), if information on the effects of such discharge, including consideration of the guidelines developed under subsection (b)(1) of this section, is included in an environmental impact statement for such project pursuant to the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and such environmental impact statement has been submitted to Congress before the actual discharge of dredged or fill material in connection with the construction of such project and prior to either authorization of such project or an appropriation of funds for such construction.

(s) Violation of permits

(1) Whenever on the basis of any information available to him the Secretary finds that any person is in violation of any condition or limitation set forth in a permit issued by the Secretary under this section, the Secretary shall issue an order requiring such person to comply with such condition or limitation, or the Secretary shall bring a civil action in accordance with paragraph (3) of this subsection.

(2) A copy of any order issued under this subsection shall be sent immediately by the Secretary to the State in which the violation occurs and other affected States. Any order issued under this subsection shall be by personal service and shall state with reasonable specificity the nature of the violation, specify a time for compliance, not to exceed thirty days, which the Secretary determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection is issued to a corporation, a copy of such order shall be served on any appropriate corporate officers.

(3) The Secretary is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction for any violation for which he is authorized to issue a compliance order under paragraph (1) of this subsection. Any action under this paragraph may

be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance. Notice of the commencement of such action shall be given immediately to the appropriate State.

(4)(A) Any person who willfully or negligently violates any condition or limitation in a permit issued by the Secretary under this section shall be punished by a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$50,000 per day of violation, or by imprisonment for not more than two years, or by both.

(B) For the purposes of this paragraph, the term "person" shall mean, in addition to the definition contained in section 1362(5) of this title, any responsible corporate officer.

(5) Any person who violates any condition or limitation in a permit issued by the Secretary under this section, and any person who violates any order issued by the Secretary under paragraph (1) of this subsection, shall be subject to a civil penalty not to exceed \$10,000 per day of such violation.

(1) Navigable waters within State jurisdiction

Nothing in this section shall preclude or deny the right of any State or interstate agency to control the discharge of dredged or fill material in any portion of the navigable waters within the jurisdiction of such State, including any activity of any Federal agency, and each such agency shall comply with such State or interstate requirements both substantive and procedural to control the discharge of dredged or fill material to the same extent that any person is subject to such requirements. This section shall not be construed as affecting or impairing the authority of the Secretary to maintain navigation.

(June 30, 1948, ch. 758, title IV, § 404, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 884, and amended Dec. 27, 1977, Pub. L. 95-217, § 67(a), (b), 91 Stat. 1800.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (e), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

AMENDMENTS

1977—Subsec. (a), Pub. L. 95-217, § 67(a)(1), substituted "The Secretary" for "The Secretary of the Army, acting through the Chief of Engineers," and added provision that, not later than the fifteenth day after the date an applicant submits all the information required to complete an application for a permit under this subsection, the Secretary publish the notice required by this subsection.

Subsec. (b), Pub. L. 95-217, § 67(a)(2), substituted "the Secretary" for "the Secretary of the Army".

¹So in original. Probably should be "action".

Subsec. (c), Pub. L. 95-217, § 67(a)(2), substituted "the Secretary" for "the Secretary of the Army".

Subsecs. (d) to (l), Pub. L. 95-217, § 67(b), added subsecs. (d) to (l).

TRANSFER OF FUNCTIONS

Enforcement functions of Administrator or other official of the Environmental Protection Agency and of Secretary or other official in Department of Interior relating to review of the Corps of Engineers' dredged and fill material permits and such functions of Secretary of the Army, Chief of Engineers, or other official in Corps of Engineers of the United States Army relating to compliance with dredged and fill material permits issued under this section with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of the date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, § 102(a), (b), (c), 203(a), 44 P.R. 33662, 33866, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees.

AUTHORITY TO DELEGATE TO STATE OF WASHINGTON FUNCTIONS OF THE SECRETARY RELATING TO LAKE CHELAN, WASHINGTON

Section 76 of Pub. L. 95-217 provided that: "The Secretary of the Army, acting through the Chief of Engineers, is authorized to delegate to the State of Washington upon its request all or any part of those functions vested in such Secretary by section 404 of the Federal Water Pollution Control Act (this section) and by sections 9, 10, and 13 of the Act of March 3, 1899 (sections 491, 493, and 497 of this title), relating to Lake Chelan, Washington, if the Secretary determines (1) that such State has the authority, responsibility, and capability to carry out such functions, and (2) that such delegation is in the public interest. Such delegation shall be subject to such terms and conditions as the Secretary deems necessary, including, but not limited to, suspension and revocation for cause of such delegation."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1281, 1285, 1289, 1311, 1315, 1319, 1342 of this title; title 42 section 9601.

§ 1345. Disposal or use of sewage sludge

(a) Permit

Notwithstanding any other provision of this chapter or of any other law, in any case where the disposal of sewage sludge resulting from the operation of a treatment works as defined in section 1292 of this title (including the removal of in-place sewage sludge from one location and its deposit at another location) would result in any pollutant from such sewage sludge entering the navigable waters, such disposal is prohibited except in accordance with a permit issued by the Administrator under section 1342 of this title.

(b) Issuance of permit; regulations

The Administrator shall issue regulations governing the issuance of permits for the disposal of sewage sludge subject to subsection (a) of this section and section 1342 of this title. Such regulations shall require the application to such disposal of each criterion, factor, proce-

dures, and requirements applicable to a permit issued under section 1342 of this title.

(c) State permit program

Each State desiring to administer its own permit program for disposal of sewage sludge subject to subsection (a) of this section within its jurisdiction may do so in accordance with section 1342 of this title.

(d) Regulations providing guidelines

The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after December 27, 1977, and from time to time thereafter, regulations providing guidelines for the disposal of sludge and the utilization of sludge for various purposes. Such regulations shall—

- (1) identify uses for sludge, including disposal;
- (2) specify factors to be taken into account in determining the measures and practices applicable to each such use or disposal (including publication of information on costs);
- (3) identify concentrations of pollutants which interfere with each such use or disposal.

The Administrator is authorized to revise any regulation issued under this subsection.

(e) Local determination; compliance with guidelines

The determination of the manner of disposal or use of sludge is a local determination except that it shall be unlawful for the owner or operator of any publicly owned treatment works to dispose of sludge from such works for any use for which guidelines have been established pursuant to subsection (d) of this section, except in accordance with such guidelines.

(June 30, 1948, ch. 758, title IV, § 405, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 884, and amended Dec. 27, 1977, Pub. L. 95-217, § 54(d), 68, 91 Stat. 1591, 1604.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-217, § 68(a), substituted "under section 1342 of this title" for "under this section".

Subsec. (b). Pub. L. 95-217, § 54(d)(1), 88(b), (c), substituted "sewage sludge subject to subsection (a) of this section and section 1342 of this title" for "sewage sludge subject to this section" and struck out ", as the Administrator determines necessary to carry out the objective of this chapter" following "permit issued under section 1342 of this title".

Subsec. (c). Pub. L. 95-217, § 54(d)(2), 88(d), substituted "disposal of sewage sludge subject to subsection (a) of this section within its jurisdiction may do so in accordance with section 1342 of this title" for "disposal of sewage sludge within its jurisdiction may do so if upon submission of such program the Administrator determines such program is adequate to carry out the objective of this chapter".

Subsecs. (d), (e). Pub. L. 95-217, § 54(d)(3), added subsecs. (d) and (e).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1317, 1318 of this title.

SUBCHAPTER V—GENERAL PROVISIONS

§ 1361. Administration

(a) Authority of Administrator to prescribe regulations

The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this chapter.

(b) Utilization of other agency officers and employees

The Administrator, with the consent of the head of any other agency of the United States, may utilize such officers and employees of such agency as may be found necessary to assist in carrying out the purposes of this chapter.

(c) Recordkeeping

Each recipient of financial assistance under this chapter shall keep such records as the Administrator shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate effective audit.

(d) Audit

The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the recipients that are pertinent to the grants received under this chapter.

(e) Awards for outstanding technological achievement or innovative processes, methods, or devices in waste treatment and pollution abatement programs

(1) It is the purpose of this subsection to authorize a program which will provide official recognition by the United States Government to those industrial organizations and political subdivisions of States which during the preceding year demonstrated an outstanding technological achievement or an innovative process, method, or device in their waste treatment and pollution abatement programs. The Administrator shall, in consultation with the appropriate State water pollution control agencies, establish regulations under which such recognition may be applied for and granted, except that no applicant shall be eligible for an award under this subsection if such applicant is not in total compliance with all applicable water quality requirements under this chapter, or otherwise does not have a satisfactory record with respect to environmental quality.

(2) The Administrator shall award a certificate or plaque of suitable design to each industrial organization or political subdivision which qualifies for such recognition under regulations established under this subsection.

(3) The President of the United States, the Governor of the appropriate State, the Speaker of the House of Representatives, and the President pro tempore of the Senate shall be notified of the award by the Administrator and the

awarding of such recognition shall be published in the Federal Register.

(f) Detail of Environmental Protection Agency personnel to State water pollution control agencies

Upon the request of a State water pollution control agency, personnel of the Environmental Protection Agency may be detailed to such agency for the purpose of carrying out the provisions of this chapter.

(June 30, 1948, ch. 758, title V, § 501, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 885.)

ENVIRONMENTAL COURT FEASIBILITY STUDY

Section 9 of Pub. L. 92-500 authorized the President, acting through the Attorney General, to study the feasibility of establishing a separate court or court system with jurisdiction over environmental matters and required him to report the results of his study, together with his recommendations, to Congress not later than one year after Oct. 18, 1972.

TRANSFER OF PUBLIC HEALTH SERVICE OFFICERS

Pub. L. 89-234, § 2(b)-(k), Oct. 2, 1965, 79 Stat. 903, authorized the transfer of certain commissioned officers of the Public Health Service to classified positions in the Federal Water Pollution Control Administration, now the Environmental Protection Agency, where such transfer was requested within six months after the establishment of the Administration and made certain administrative provisions relating to pension and retirement rights of the transferees, sick leave benefits, group life insurance, and certain other miscellaneous provisions.

§ 1362. Definitions

Except as otherwise specifically provided, when used in this chapter:

(1) The term "State water pollution control agency" means the State agency designated by the Governor having responsibility for enforcing State laws relating to the abatement of pollution.

(2) The term "interstate agency" means an agency of two or more States established by or pursuant to an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator.

(3) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(4) The term "municipality" means a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 1288 of this title.

(5) The term "person" means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.

(6) The term "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock,

sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean (A) "sewage from vessels" within the meaning of section 1322 of this title; or (B) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will not result in the degradation of ground or surface water resources.

(7) The term "navigable waters" means the waters of the United States, including the territorial seas.

(8) The term "territorial seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.

(9) The term "contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention of the Territorial Sea and the Contiguous Zone.

(10) The term "ocean" means any portion of the high seas beyond the contiguous zone.

(11) The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.

(12) The term "discharge of a pollutant" and the term "discharge of pollutants" each means (A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.

(13) The term "toxic pollutant" means those pollutants, or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the Administrator, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.

(14) The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(15) The term "biological monitoring" shall mean the determination of the effects on

aquatic life, including accumulation of pollutants in tissue, in receiving waters due to the discharge of pollutants (A) by techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain appropriate to the volume and the physical, chemical, and biological characteristics of the effluent, and (B) at appropriate frequencies and locations.

(16) The term "discharge" when used without qualification includes a discharge of a pollutant, and a discharge of pollutants.

(17) The term "schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.

(18) The term "industrial user" means those industries identified in the Standard Industrial Classification Manual, Bureau of the Budget, 1967, as amended and supplemented, under the category of "Division D--Manufacturing" and such other classes of significant waste producers as, by regulation, the Administrator deems appropriate.

(19) The term "pollution" means the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.

(June 30, 1948, ch. 758, title V, § 502, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 888, and amended Dec. 27, 1977, Pub. L. 95-217, § 33(b), 91 Stat. 1577.)

AMENDMENTS

1977--Par. (14), Pub. L. 95-217 added provision that the term "point source" does not include return flows from irrigated agriculture.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1319, 1344 of this title; title 26 section 169; title 30 section 1419; title 42 sections 9117, 9491.

§ 1363. Water Pollution Control Advisory Board

(a) Establishment; composition; terms of office

(1) There is hereby established in the Environmental Protection Agency a Water Pollution Control Advisory Board, composed of the Administrator or his designee, who shall be Chairman, and nine members appointed by the President, none of whom shall be Federal officers or employees. The appointed members, having due regard for the purposes of this chapter, shall be selected from among representatives of various State, interstate, and local governmental agencies, of public or private interests contributing to, affected by, or concerned with pollution, and of other public and private agencies, organizations, or groups demonstrating an active interest in the field of pollution prevention and control, as well as other individuals who are expert in this field.

(2)(A) Each member appointed by the President shall hold office for a term of three years, except that (i) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (ii) the terms of office of the mem-

bers first taking office after June 30, 1956, shall expire as follows: three at the end of one year after such date, three at the end of two years after such date, and three at the end of three years after such date, as designated by the President at the time of appointment, and (iii) the term of any member under the preceding provisions shall be extended until the date on which his successor's appointment is effective. None of the members appointed by the President shall be eligible for reappointment within one year after the end of his preceding term.

(B) The members of the Board who are not officers or employees of the United States, while attending conferences or meetings of the Board or while serving at the request of the Administrator, shall be entitled to receive compensation at a rate to be fixed by the Administrator, but not exceeding \$100 per diem, including travel-time, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons in the Government service employed intermittently.

(b) Functions

The Board shall advise, consult with, and make recommendations to the Administrator on matters of policy relating to the activities and functions of the Administrator under this chapter.

(c) Clerical and technical assistance

Such clerical and technical assistance as may be necessary to discharge the duties of the Board shall be provided from the personnel of the Environmental Protection Agency.

(June 30, 1948, ch. 758, title V, § 503, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 887.)

REFERENCES IN TEXT

Travel expenses, including per diem in lieu of subsistence as authorized by law, referred to in subsec. (a)(2)(B), probably means the allowances authorized by section 5703 of Title 5, Government Organization and Employees.

CONTINUATION OF TERM OF OFFICE

Pub. L. 87-88, § 6(c), July 20, 1961, 75 Stat. 207, provided that members of the Water Pollution Control Advisory Board holding office immediately preceding July 20, 1961 were to remain in office as members of the Board as established by section 6(a) of Pub. L. 87-88 until the expiration of the terms of office for which they were originally appointed.

TERMS OF OFFICE OF MEMBERS OF WATER POLLUTION CONTROL ADVISORY BOARD

Act July 9, 1966, ch. 618, § 3, 70 Stat. 507, provided that the terms of office of members of the Water Pollution Control Advisory Board, holding office on July 9, 1966, were to terminate at the close of business on that date.

TERMINATION OF ADVISORY BOARDS

Advisory boards in existence on Jan. 3, 1973, to terminate not later than the expiration of the two-year period following Jan. 5, 1973, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a board established by the

Congress, its duration is otherwise provided for by law, see sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 779, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1364. Emergency powers

(a) Emergency powers

Notwithstanding any other provision of this chapter, the Administrator upon receipt of evidence that a pollution source or combination of sources is presenting an imminent and substantial endangerment to the health of persons or to the welfare of persons where such endangerment is to the livelihood of such persons, such as inability to market shellfish, may bring suit on behalf of the United States in the appropriate district court to immediately restrain any person causing or contributing to the alleged pollution to stop the discharge of pollutants causing or contributing to such pollution or to take such other action as may be necessary.

(b) Repealed. Pub. L. 96-510, Title III, § 304(a), Dec. 11, 1980, 94 Stat. 2809

(June 30, 1948, ch. 758, Title V, § 504, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 888, and amended Dec. 27, 1977, Pub. L. 95-217, § 69, 91 Stat. 1607; Dec. 11, 1980, Pub. L. 96-510, Title III, § 304(a), 94 Stat. 2809.)

AMENDMENTS

1980—Subsec. (b), Pub. L. 96-510 struck out subsec. (b), which related to emergency assistance, establishment of an emergency fund, and preparation of a contingency plan for such emergencies.

1977—Pub. L. 95-217 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 96-510 effective Dec. 11, 1980, see section 9652 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1256, 1318 of this title; title 42 sections 9608, 9631, 9634.

§ 1365. Citizen suits

(a) Authorization; jurisdiction

Except as provided in subsection (b) of this section, any citizen may commence a civil action on his own behalf—

(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of (A) an effluent standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation, or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an effluent standard or limitation, or such an order, or to order the Administrator to perform such

act or duty, as the case may be, and to apply any appropriate civil penalties under section 1319(d) of this title.

(b) Notice

No action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to sixty days after the plaintiff has given notice of the alleged violation (i) to the Administrator, (ii) to the State in which the alleged violation occurs, and (iii) to any alleged violator of the standard, limitation, or order, or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States, or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any citizen may intervene as a matter of right.

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator,

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of sections 1316 and 1317(a) of this title. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

(c) Venue; intervention by Administrator

(1) Any action respecting a violation by a discharge source of an effluent standard or limitation or an order respecting such standard or limitation may be brought under this section only in the judicial district in which such source is located.

(2) In such action under this section, the Administrator, if not a party, may intervene as a matter of right.

(d) Litigation costs

The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Statutory or common law rights not restricted

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any effluent standard or limitation or to seek any other relief (including relief against the Administrator or a State agency).

(f) Effluent standard or limitation

For purposes of this section, the term "effluent standard or limitation under this chapter" means (1) effective July 1, 1973, an unlawful act under subsection (a) of section 1311 of this title, (2) an effluent limitation or other limitation under section 1311 or 1312 of this title; (3)

standard of performance under section 1316 of this title; (4) prohibition, effluent standard or pretreatment standards under section 1317 of this title; (5) certification under section 1341 of this title; or (6) a permit or condition thereof issued under section 1342 of this title, which is in effect under this chapter (including a requirement applicable by reason of section 1323 of this title).

(g) Citizen

For the purposes of this section the term "citizen" means a person or persons having an interest which is or may be adversely affected.

(h) Civil action by State Governors

A Governor of a State may commence a civil action under subsection (a) of this section, without regard to the limitations of subsection (b) of this section, against the Administrator where there is alleged a failure of the Administrator to enforce an effluent standard or limitation under this chapter the violation of which is occurring in another State and is causing an adverse effect on the public health or welfare in his State, or is causing a violation of any water quality requirement in his State.

(June 30, 1948, ch. 758, title V, § 505, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 888.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (d), are classified generally to the Appendix to Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1342, 1344 of this title.

§ 1366. Appearance

The Administrator shall request the Attorney General to appear and represent the United States in any civil or criminal action instituted under this chapter to which the Administrator is a party. Unless the Attorney General notifies the Administrator within a reasonable time, that he will appear in a civil action, attorneys who are officers or employees of the Environmental Protection Agency shall appear and represent the United States in such action.

(June 30, 1948, ch. 758, title V, § 506, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 889.)

§ 1367. Employee protection

(a) Discrimination against persons filing, instituting, or testifying in proceedings under this chapter prohibited

No person shall fire, or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this chapter, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this chapter.

(b) Application for review; investigation; hearing; review

Any employee or a representative of employees who believes that he has been fired or oth-

erwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions of the Administrator are subject to judicial review under this chapter.

(c) Costs and expenses

Whenever an order is issued under this section to abate such violation, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees), as determined by the Secretary of Labor, to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

(d) Deliberate violations by employee acting without direction from his employer or his agent

This section shall have no application to any employee who, acting without direction from his employer (or his agent) deliberately violates any prohibition of effluent limitation or other limitation under section 1311 or 1312 of this title, standards of performance under section 1316 of this title, effluent standard, prohibition or pretreatment standard under section 1317 of this title, or any other prohibition or limitation established under this chapter.

(e) Investigations of employment reductions

The Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the issuance of any effluent limitation or order under this chapter, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such limitation or order. Any employee who is dis-

charged or laid-off, threatened with discharge or lay-off, or otherwise discriminated against by any person because of the alleged results of any effluent limitation or order issued under this chapter, or any representative of such employee, may request the Administrator to conduct a full investigation of the matter. The Administrator shall thereupon investigate the matter and, at the request of any party, shall hold public hearings on not less than five days notice, and shall at such hearings require the parties, including the employer involved, to present information relating to the actual or potential effect of such limitation or order on employment and on any alleged discharge, lay-off, or other discrimination and the detailed reasons or justification therefor. Any such hearing shall be of record and shall be subject to section 554 of title 5. Upon receiving the report of such investigation, the Administrator shall make findings of fact as to the effect of such effluent limitation or order on employment and on the alleged discharge, lay-off, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the Administrator to modify or withdraw any effluent limitation or order issued under this chapter.

(June 30, 1948, ch. 758, title V, § 507, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 890.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1369 of this title.

§ 1368. Federal procurement

(a) Contracts with violators prohibited

No Federal agency may enter into any contract with any person, who has been convicted of any offense under section 1319(c) of this title, for the procurement of goods, materials, and services if such contract is to be performed at any facility at which the violation which gave rise to such conviction occurred, and if such facility is owned, leased, or supervised by such person. The prohibition in the preceding sentence shall continue until the Administrator certifies that the condition giving rise to such conviction has been corrected.

(b) Notification of agencies

The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a) of this section.

(c) Omitted

(d) Exemptions

The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.

(e) Annual report to Congress

The President shall annually report to the Congress on measures taken in compliance with

the purpose and intent of this section, including, but not limited to, the progress and problems associated with such compliance.

(June 30, 1948, ch. 758, title V, § 508, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 891.)

CODIFICATION

Subsec. (c) authorized the President to cause to be issued, not more than 180 days after October 18, 1972, an order (1) requiring each Federal agency authorized to enter into contracts or to extend Federal assistance by way of grant, loan, or contract, to effectuate the purpose and policy of this chapter, and (2) setting forth procedures, sanctions and penalties as the President determines necessary to carry out such requirement.

ADMINISTRATION OF CHAPTER WITH RESPECT TO FEDERAL CONTRACTS, GRANTS, OR LOANS

For provisions concerning the administration of this chapter with respect to Federal contracts, grants, or loans, see Ex. Ord. No. 11738, Sept. 10, 1973, 38 P.R. 28181, set out as a note under section 1906 of Title 42, The Public Health and Welfare.

§ 1369. Administrative procedure and judicial review

(a) Subpenas

(1) For purposes of obtaining information under section 1315 of this title, or carrying out section 1367(c) of this title, the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Except for effluent data, upon a showing satisfactory to the Administrator that such papers, books, documents, or information or particular part thereof, if made public, would divulge trade secrets or secret processes, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1906 of title 18, except that such paper, book, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, or when relevant in any proceeding under this chapter. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person under this subsection, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator, to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(2) The district courts of the United States are authorized, upon application by the Administrator, to issue subpoenas for attendance and testimony of witnesses and the production of relevant papers, books, and documents, for purposes of obtaining information under sections 1314(b) and (c) of this title. Any papers, books, documents, or other information or part there-

of, obtained by reason of such a subpoena shall be subject to the same requirements as are provided in paragraph (1) of this subsection.

(b) Review of Administrator's actions

(1) Review of the Administrator's action (A) in promulgating any standard of performance under section 1316 of this title, (B) in making any determination pursuant to section 1316(b)(1)(C) of this title, (C) in promulgating any effluent standard, prohibition, or pretreatment standard under section 1317 of this title, (D) in making any determination as to a State permit program submitted under section 1342(b) of this title, (E) in approving or promulgating any effluent limitation or other limitation under section 1311, 1312, or 1315 of this title, and (F) in issuing or denying any permit under section 1342 of this title, may be had by any interested person in the Circuit Court of Appeals of the United States for the Federal judicial district in which such person resides or transacts such business upon application by such person. Any such application shall be made within ninety days from the date of such determination, approval, promulgation, issuance or denial, or after such date only if such application is based solely on grounds which arose after such ninetieth day.

(2) Action of the Administrator with respect to which review could have been obtained under paragraph (1) of this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement.

(c) Additional evidence

In any judicial proceeding brought under subsection (b) of this section in which review is sought of a determination under this chapter required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

(June 30, 1948, ch. 758, title V, § 509, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 891, and amended Dec. 26, 1973, Pub. L. 93-207, § 1(d), 87 Stat. 806.)

AMENDMENTS

1973—Subsec. (b)(1)(C). Pub. L. 93-207 substituted "pretreatment" for "treatment".

§ 1378. State authority

Except as expressly provided in this chapter, nothing in this chapter shall (1) preclude or deny the right of any State or political subdivi-

sion thereof or interstate agency to adopt or enforce (A) any standard or limitation respecting discharges of pollutants, or (B) any requirement respecting control or abatement of pollution; except that if an effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance is in effect under this chapter, such State or political subdivision or interstate agency may not adopt or enforce any effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance which is less stringent than the effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance under this chapter; or (2) be construed as impairing or in any manner affecting any right or jurisdiction of the States with respect to the waters (including boundary waters) of such States.

(June 30, 1948, ch. 758, title V, § 510, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 893.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1311 of this title.

§ 1371. Authority under other laws and regulations

(a) Impairment of authority or functions of officials and agencies; treaty provisions

This chapter shall not be construed as (1) limiting the authority or functions of any officer or agency of the United States under any other law or regulation not inconsistent with this chapter; (2) affecting or impairing the authority of the Secretary of the Army (A) to maintain navigation or (B) under the Act of March 3, 1898, (30 Stat. 1112); except that any permit issued under section 1344 of this title shall be conclusive as to the effect on water quality of any discharge resulting from any activity subject to section 403 of this title, or (3) affecting or impairing the provisions of any treaty of the United States.

(b) Discharges of pollutants into navigable waters

Discharges of pollutants into the navigable waters subject to the Rivers and Harbors Act of 1910 (36 Stat. 593; 33 U.S.C. 421) and the Supervisory Harbors Act of 1888 (25 Stat. 209; 33 U.S.C. 441-451b) shall be regulated pursuant to this chapter, and not subject to such Act of 1910 and the Act of 1888 except as to effect on navigation and anchorage.

(c) Action of the Administrator deemed major Federal action; construction of the National Environmental Policy Act of 1969

(1) Except for the provision of Federal financial assistance for the purpose of assisting the construction of publicly owned treatment works as authorized by section 1281 of this title, and the issuance of a permit under section 1342 of this title for the discharge of any pollutant by a new source as defined in section 1316 of this title, no action of the Administrator taken pursuant to this chapter shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy

Act of 1969 (83 Stat. 852) [42 U.S.C. 4321 et seq.]; and

(2) Nothing in the National Environmental Policy Act of 1969 (83 Stat. 852) shall be deemed to—

(A) authorize any Federal agency authorized to license or permit the conduct of any activity which may result in the discharge of a pollutant into the navigable waters to review any effluent limitation or other requirement established pursuant to this chapter or the adequacy of any certification under section 1341 of this title; or

(B) authorize any such agency to impose, as a condition precedent to the issuance of any license or permit, any effluent limitation other than any such limitation established pursuant to this chapter.

(d) Consideration of international water pollution control agreements

Notwithstanding this chapter or any other provision of law, the Administrator (1) shall not require any State to consider in the development of the ranking in order of priority of needs for the construction of treatment works (as defined in subchapter II of this chapter), any water pollution control agreement which may have been entered into between the United States and any other nation, and (2) shall not consider any such agreement in the approval of any such priority ranking.

(June 30, 1948, ch. 758, title V, § 511, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 893, and amended Jan. 2, 1974, Pub. L. 93-243, § 3, 87 Stat. 1089.)

REFERENCES IN TEXT

The Act of March 3, 1899, referred to in subsec. (a), is act Mar. 3, 1899, ch. 425, 30 Stat. 1121, as amended, which enacted sections 401, 403, 404, 406, 407, 408, 409, 411 to 416, 418, 502, 549, and 687 of this title and amended section 586 of this title. For complete classification of this Act to the Code, see Tables.

The Rivers and Harbors Act of 1910, referred to in subsec. (b), probably means act June 23, 1910, ch. 369, 36 Stat. 593.

The Supervisory Harbors Act of 1888, referred to in subsec. (b), probably means act June 29, 1888, ch. 496, 23 Stat. 209, as amended, which is classified generally to subchapter III (§ 441 et seq.) of chapter 1 of this title. For complete classification of this Act to the Code, see Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (c), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 56 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Table.

AMENDMENTS

1974—Subsec. (d). Pub. L. 93-243 added subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1341 of this title.

§ 1372. Labor standards

The Administrator shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors on treatment works for which grants

are made under this chapter shall be paid wages at rates not less than those prevailing for the same type of work on similar construction in the immediate locality, as determined by the Secretary of Labor, in accordance with the Davis-Bacon Act (46 Stat. 1494; 40 U.S.C., sec. 278a through 278a-5). The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176) and section 278c of title 40.

(June 30, 1948, ch. 758, title V, § 513, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 894.)

REFERENCES IN TEXT

The Davis-Bacon Act, referred to in text, is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to sections 278a to 278a-5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 278a of Title 40 and Tables.

Reorganization Plan Numbered 14 of 1950, referred to in text, is Reorg. Plan No. 14 of 1950, eff. May 24, 1950, 15 F.R. 3176, 64 Stat. 1267, which is set out in the Appendix to Title 5, Government Organization and Employees.

§ 1373. Public health agency coordination

The permitting agency under section 1342 of this title shall assist the applicant for a permit under such section in coordinating the requirements of this chapter with those of the appropriate public health agencies.

(June 30, 1948, ch. 758, title V, § 514, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 894.)

§ 1374. Effluent Standards and Water Quality Information Advisory Committee

(a) Establishment; membership; term

(1) There is established an Effluent Standards and Water Quality Information Advisory Committee, which shall be composed of a Chairman and eight members who shall be appointed by the Administrator within sixty days after October 18, 1972.

(2) All members of the Committee shall be selected from the scientific community, qualified by education, training, and experience to provide, assess, and evaluate scientific and technical information on effluent standards and limitations.

(3) Members of the Committee shall serve for a term of four years, and may be reappointed.

(b) Action on proposed regulations

(1) No later than one hundred and eighty days prior to the date on which the Administrator is required to publish any proposed regulations required by section 1314(b) of this title, any proposed standard of performance for new sources required by section 1316 of this title, or any proposed toxic effluent standard required by section 1317 of this title, he shall transmit to the Committee a notice of intent to propose such regulations. The Chairman of the Committee within ten days after receipt of such notice may publish a notice of a public hearing

by the Committee, to be held within thirty days.

(2) No later than one hundred and twenty days after receipt of such notice, the Committee shall transmit to the Administrator such scientific and technical information as is in its possession, including that presented at any public hearing, related to the subject matter contained in such notice.

(3) Information so transmitted to the Administrator shall constitute a part of the administrative record and comments on any proposed regulations or standards as information to be considered with other comments and information in making any final determinations.

(4) In preparing information for transmittal, the Committee shall avail itself of the technical and scientific services of any Federal agency, including the United States Geological Survey and any national environmental laboratories which may be established.

(c) **Secretary; legal counsel; compensation**

(1) The Committee shall appoint and prescribe the duties of a Secretary, and such legal counsel as it deems necessary. The Committee shall appoint such other employees as it deems necessary to exercise and fulfill its powers and responsibilities. The compensation of all employees appointed by the Committee shall be fixed in accordance with chapter 51 and subchapter III of chapter 53 of title 5.

(2) Members of the Committee shall be entitled to receive compensation at a rate to be fixed by the President but not in excess of the maximum rate of pay for grade GS-18, as provided in the General Schedule under section 5332 of title 5.

(d) **Quorum; special panel**

Five members of the Committee shall constitute a quorum, and official actions of the Committee shall be taken only on the affirmative vote of at least five members. A special panel composed of one or more members upon order of the Committee shall conduct any hearing authorized by this section and submit the transcript of such hearing to the entire Committee for its action thereon.

(e) **Rules**

The Committee is authorized to make such rules as are necessary for the orderly transaction of its business.

(June 30, 1948, ch. 758, title V, § 515, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 694.)

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the two-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law, see section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1375. Reports to Congress

(a) **Implementation of chapter objectives; status and progress of programs**

Within ninety days following the convening of each session of Congress, the Administrator shall submit to the Congress a report, in addition to any other report required by this chapter, on measures taken toward implementing the objective of this chapter, including, but not limited to, (1) the progress and problems associated with developing comprehensive plans under section 1252 of this title, areawide plans under section 1288 of this title, basin plans under section 1289 of this title, and plans under section 1313(e) of this title; (2) a summary of actions taken and results achieved in the field of water pollution control research, experiments, studies, and related matters by the Administrator and other Federal agencies and by other persons and agencies under Federal grants or contracts; (3) the progress and problems associated with the development of effluent limitations and recommended control techniques; (4) the status of State programs, including a detailed summary of the progress obtained as compared to that planned under State program plans for development and enforcement of water quality requirements; (5) the identification and status of enforcement actions pending or completed under this chapter during the preceding year; (6) the status of State, interstate, and local pollution control programs established pursuant to, and assisted by, this chapter; (7) a summary of the results of the survey required to be taken under section 1290 of this title; (8) his activities including recommendations under sections 1259 through 1261 of this title; and (9) all reports and recommendations made by the Water Pollution Control Advisory Board.

(b) **Detailed estimates and comprehensive study on costs; State estimates, survey form**

(1) The Administrator, in cooperation with the States, including water pollution control agencies and other water pollution control planning agencies, shall make (A) a detailed estimate of the cost of carrying out the provisions of this chapter; (B) a detailed estimate, biennially revised, of the cost of construction of all needed publicly owned treatment works in all of the States and of the cost of construction of all needed publicly owned treatment works in each of the States; (C) a comprehensive study of the economic impact on affected units of government of the cost of installation of treatment facilities; and (D) a comprehensive analysis of the national requirements for and the cost of treating municipal, industrial, and other effluent to attain the water quality objectives as established by this chapter or applicable State law. The Administrator shall submit such detailed estimate and such comprehensive study of such cost to the Congress no later than February 10 of each odd-numbered year. Whenever the Administrator, pursuant to this subsection, requests and receives an estimate of cost from a State, he shall furnish copies of such estimate together with such detailed estimate to Congress.

(2) Notwithstanding the second sentence of paragraph (1) of this subsection, the Administrator shall make a preliminary detailed estimate called for by subparagraph (B) of such paragraph and shall submit such preliminary detailed estimate to the Congress no later than September 3, 1974. The Administrator shall require each State to prepare an estimate of cost for such State, and shall utilize the survey form EPA-1, O.M.B. No. 158-R0017, prepared for the 1973 detailed estimate, except that such estimate shall include all costs of compliance with section 1281(g)(2)(A) of this title and water quality standards established pursuant to section 1313 of this title, and all costs of treatment works as defined in section 1292(2) of this title, including all eligible costs of constructing sewage collection systems and correcting excessive infiltration or inflow and all eligible costs of correcting combined storm and sanitary sewer problems and treating storm water flows. The survey form shall be distributed by the Administrator to each State no later than January 31, 1974.

(c) Status of combined sewer overflows in municipal treatment works operations

The Administrator shall submit to the Congress by October 1, 1978, a report on the status of combined sewer overflows in municipal treatment works operations. The report shall include (1) the status of any projects funded under this chapter to address combined sewer overflows (2) a listing by State of combined sewer overflow needs identified in the 1977 State priority listings, (3) an estimate for each applicable municipality of the number of years necessary, assuming an annual authorization and appropriation for the construction grants program of \$5,000,000,000, to correct combined sewer overflow problems, (4) an analysis using representative municipalities faced with major combined sewer overflow needs, of the annual discharges of pollutants from overflows in comparison to treated effluent discharges, (5) an analysis of the technological alternatives available to municipalities to correct major combined sewer overflow problems, and (6) any recommendations of the Administrator for legislation to address the problem of combined sewer overflows, including whether a separate authorization and grant program should be established by the Congress to address combined sewer overflows.

(d) Status on use of municipal secondary effluent and sludge for agricultural and other purposes that utilize nutrient value of treated wastewater effluent

The Administrator shall submit to the Congress by October 1, 1978, a report on the status of the use of municipal secondary effluent and sludge for agricultural and other purposes that utilize the nutrient value of treated wastewater effluent. The report shall include (1) a summary of results of research and development programs, grants, and contracts carried out by the Environmental Protection Agency pursuant to sections 1254 and 1256 of this title, regarding alternatives to disposal, landfill, or incineration of secondary effluent or sludge, (2) an estimate of the amount of sludge generated by public

treatment works and its disposition, including an estimate of annual energy costs to incinerate sludge, (3) an analysis of current technologies for the utilization, reprocessing, and other uses of sludge to utilize the nutrient value of sludge, (4) legal, institutional, public health, economic, and other impediments to the greater utilization of treated sludge, and (5) any recommendations of the Administrator for legislation to encourage or require the expanded utilization of sludge for agricultural and other purposes. In carrying out this subsection, the Administrator shall consult with, and use the services of the Tennessee Valley Authority and other departments, agencies, and instrumentalities of the United States, to the extent it is appropriate to do so.

(e) Legislative recommendations on program requiring coordination between water supply and wastewater control plans as condition for construction grants; public hearing

The Administrator, in cooperation with the States, including water pollution control agencies, and other water pollution control planning agencies, and water supply and water resources agencies of the States and the United States shall submit to Congress, within two years of December 31, 1977, a report with recommendations for legislation on a program to require coordination between water supply and wastewater control plans as a condition to grants for construction of treatment works under this chapter. No such report shall be submitted except after opportunity for public hearings on such proposed report.

(June 30, 1948, ch. 758, title V, § 518, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 895, and amended Jan. 2, 1974, Pub. L. 93-243, § 4, 87 Stat. 1068; Dec. 27, 1977, Pub. L. 95-217, § 170-72, 91 Stat. 1608, 1609.)

AMENDMENTS

1977—Subsec. (c) to (e). Pub. L. 95-217 added subsec. (c) to (e).

1974—Subsec. (b). Pub. L. 93-243 designated existing paragraph as par. (1) and chs. (1) to (4) as (A) to (D), and added par. (2).

DETAILED ESTIMATES, COMPREHENSIVE STUDY, AND COMPREHENSIVE ANALYSIS: REPORT TO CONGRESS NOT LATER THAN DECEMBER 31, 1983

Pub. L. 97-117, § 26, Dec. 28, 1981, 96 Stat. 1633, provided that the Administrator of the Environmental Protection Agency submit to the Congress, not later than December 31, 1983, a report containing the detailed estimates, comprehensive study, and comprehensive analysis required by section 1278(b) of this title, including an estimate of the total cost and the amount of Federal funds necessary for the construction of needed publicly owned treatment facilities, such report to reflect the changes made in the Federal water pollution control program by Pub. L. 97-117 [see Short Title of 1981 Amendment note set out under section 1251 of this title]. The Administrator was to give emphasis to the effects of the amendment made by section 2(a) of Pub. L. 97-117 (amending section 1281(g)(1) of this title) in addressing water quality needs adequately and appropriately.

STUDY AND REPORT TO CONGRESS BY SECRETARY OF THE INTERIOR OF FINANCING WATER POLLUTION PREVENTION, CONTROL, AND ABATEMENT PROGRAMS

Pub. L. 91-224, title I, § 109, Apr. 3, 1970, 34 Stat. 113, directed the Secretary of the Interior to conduct a full and complete investigation and study of the feasibility of all methods of financing the cost of preventing, controlling, and abating water pollution, other than methods authorized by existing law, with results of such investigation and study to be reported to Congress no later than Dec. 31, 1976, together with the recommendations of the Secretary for financing the programs for preventing, controlling, and abating water pollution for the fiscal years beginning after fiscal year 1971, including any necessary legislation.

TERMINATION OF ADVISORY BOARDS

Advisory boards in existence on Jan. 5, 1973, to terminate not later than the expiration of the two-year period following Jan. 5, 1973, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a board established by the Congress, its duration is otherwise provided by law, see sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 778, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1254, 1266, 1285, 1290 of this title.

§ 1376. Authorization of appropriations

There are authorized to be appropriated to carry out this chapter, other than sections 1254, 1255, 1258(a), 1257, 1258, 1262, 1263, 1264, 1265, 1286, 1287, 1288(f) and (h), 1289, 1314, 1321(c), (d), (l), (j), and (k), 1324, 1325, and 1327 of this title, \$280,000,000 for the fiscal year ending June 30, 1973, \$300,000,000 for the fiscal year ending June 30, 1974, \$350,000,000 for the fiscal year ending June 30, 1975, \$100,000,000 for the fiscal year ending September 30, 1977, \$150,000,000 for the fiscal year ending September 30, 1978, \$150,000,000 for the fiscal year ending September 30, 1979, \$150,000,000 for the fiscal year ending September 30, 1980, \$150,000,000 for the fiscal year ending September 30, 1981, and \$161,000,000 for the fiscal year ending September 30, 1982.

(June 30, 1948, ch. 758, title V, § 517, as added Oct. 16, 1972, Pub. L. 92-500, § 2, 86 Stat. 896, and amended Dec. 27, 1977, Pub. L. 95-217, § 4(g), 91 Stat. 1567; Oct. 21, 1980, Pub. L. 96-483, § 1(g), 94 Stat. 2360.)

AMENDMENTS

1980—Pub. L. 96-483 added authorization of \$150,000,000 for fiscal year ending Sept. 30, 1981 and \$161,000,000 for fiscal year ending Sept. 30, 1982.

1977—Pub. L. 95-217 substituted “\$350,000,000 for the fiscal year ending June 30, 1978, \$100,000,000 for the fiscal year ending September 30, 1977, \$150,000,000 for the fiscal year ending September 30, 1978, \$150,000,000 for the fiscal year ending September 30, 1979, and \$150,000,000 for the fiscal year ending September 30, 1980” for “and \$350,000,000 for the fiscal year ending June 30, 1978”.

AUTHORIZATION APPROVAL FOR FUNDS APPROPRIATED BEFORE DECEMBER 27, 1977, FOR EXPENDITURES THROUGH FISCAL YEAR ENDING SEPTEMBER 30, 1977

Pub. L. 95-217, § 3, Dec. 27, 1977, 91 Stat. 1566, provided that funds appropriated before Dec. 27, 1977 for

expenditure during the fiscal year ending June 30, 1976, the transition quarter ending September 30, 1976, and the fiscal year ending September 30, 1977, under authority of this chapter were authorized for those purposes for which appropriated.

**National Ocean Pollution Research and Development
and Monitoring Planning Act of 1978***

* Pub. L. 95-273, 92 Stat. 228; 33 U.S.C. §1701 et seq (1978).

Public Law 95-273
95th Congress

An Act

May 8, 1978
[S. 1617]

To establish a program of ocean pollution research, development, and monitoring, and for other purposes.

National Ocean
Pollution
Research and
Development and
Monitoring
Planning Act of
1978.
33 USC 1701
note.
33 USC 1701.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Ocean Pollution Research and Development and Monitoring Planning Act of 1978".

SEC. 2. FINDINGS AND PURPOSES.

(a) **FINDINGS.**—The Congress finds and declares the following:

(1) Man's activities in the marine environment can have a profound short-term and long-term impact on such environment and greatly affect ocean and coastal resources therein.

(2) There is a need to establish a comprehensive Federal plan for ocean pollution research and development and monitoring, with particular attention being given to the inputs, fates, and effects of pollutants in the marine environment.

(3) Man will increasingly be forced to rely on ocean and coastal resources as other resources are depleted. Our ability to protect, preserve, develop, and utilize these ocean and coastal resources is directly related to our understanding of the effects which ocean pollution has upon such resources.

(4) Numerous departments, agencies, and instrumentalities of the Federal Government sponsor, support, or fund activities relating to ocean pollution research and development and monitoring. However, such activities are often uncoordinated and can result in unnecessary duplication.

(5) Better planning and more effective use of available funds, personnel, vessels, facilities, and equipment is the key to effective Federal action regarding ocean pollution research and development and monitoring.

(b) **PURPOSES.**—It is therefore the purpose of the Congress in this Act—

(1) to establish a comprehensive 5-year plan for Federal ocean pollution research and development and monitoring programs in order to provide planning for, coordination of, and dissemination of information with respect to such programs within the Federal Government;

(2) to develop the necessary base of information to support, and to provide for, the rational, efficient, and equitable utilization, conservation, and development of ocean and coastal resources; and

(3) to designate the National Oceanic and Atmospheric Administration as the lead Federal agency for preparing the plan referred to in paragraph (1) and to require the Administration to carry out a comprehensive program of ocean pollution research and development and monitoring under the plan.

33 USC 1702.

SEC. 3. DEFINITIONS.

As used in this Act, unless the context otherwise requires—

(1) The term "Administration" means the National Oceanic and Atmospheric Administration.

(2) The term "Administrator" means the Administrator of the Administration.

(3) The term "Director" means the Director of the Office of Science and Technology Policy in the Executive Office of the President.

(4) The term "marine environment" means the coastal zone (as defined in section 304(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453(1))); the seabed, subsoil, and waters of the territorial sea of the United States; the waters of any zone over which the United States asserts exclusive fishery management authority; the waters of the high seas; and the seabed and subsoil of and beyond the Outer Continental Shelf.

(5) The term "ocean and coastal resource" has the same meaning as is given such term in section 203(7) of the National Sea Grant Program Act (33 U.S.C. 1122(7)).

(6) The term "ocean pollution" means any short-term or long-term change in the marine environment.

SEC. 4. COMPREHENSIVE FEDERAL PLAN RELATING TO OCEAN POLLUTION. 33 USC 1703.

(a) **LEAD AGENCY FOR PLAN.**—The Administrator, in consultation with the Director and other appropriate Federal officials having authority over ocean pollution research and development and monitoring programs, shall prepare, in accordance with this section, a comprehensive 5-year plan (hereinafter in this Act referred to as the "Plan") for the overall Federal effort in ocean pollution research and development and monitoring. The Plan shall be prepared and submitted to Congress and the President on or before February 15, 1979, and a revision of the Plan shall be prepared and so submitted by February 15 of each odd-numbered year occurring after 1979. Responsibility.

(b) **CONTENT OF PLAN.**—The Plan shall contain, but need not be limited to, the following elements: Submittal to President and Congress.

(1) **ASSESSMENT AND ORDERING OF NATIONAL NEEDS AND PROBLEMS.**—The Plan shall— National priorities.

(A) identify those national needs and problems, which relate to specific aspects of ocean pollution (including, but not limited to, the effects of ocean pollution on the economic, social, and environmental values of ocean and coastal resources), which exist and will arise during the Plan period;

(B) establish the priority, based upon the value and cost of information which can be obtained from specific ocean pollution research and development and monitoring programs and projects, in which such needs should be met, and such problems should be solved, during the Plan period; and

(C) contain, if pursuant to the preparation of any revision of the Plan required under subsection (a) it is determined that any national need or problem or priority set forth in the preceding version of the Plan should be changed, a detailed explanation of the reasons for the change.

(2) **EXISTING FEDERAL CAPABILITY.**—The Plan shall contain— Existing Federal capability.

(A) a detailed listing of all existing Federal programs relating to ocean pollution research and development and monitoring (including, but not limited to, general research on marine ecosystems), which listing shall include, with respect to each such program—

(i) a catalogue of the Federal personnel, facilities, vessels and other equipment currently assigned to, or used for, the program, and

(ii) a detailed description of the existing goals and costs of the program, including, but not limited to, a categorical breakdown of the funds currently being expended, and planned to be expended, to conduct the program; and

(B) an analysis of the extent to which each such program, if continued on the basis and at the funding level described pursuant to subparagraph (A) (ii), will assist in meeting the priorities set forth pursuant to paragraph (1) (B) during the Plan period.

(3) **POLICY RECOMMENDATIONS.**—If it is determined, as a result of the analysis required to be made under paragraph (2) (B), that the priorities set forth pursuant to paragraph (1) (B) will not be adequately met during the Plan period using the existing Federal capability described pursuant to paragraph (2) (A), the Plan shall contain those recommendations for changes in the overall Federal effort in ocean pollution research and development and monitoring which would ensure that those priorities are adequately met during the Plan period. Such recommendations may include, but need not be limited to—

(A) changes in the goals to be achieved under various existing Federal ocean pollution research and development and monitoring programs;

(B) suggested increases and decreases in the funding for any such existing program consistent with the extent to which such program contributes to the meeting of such priorities;

(C) specific proposals for interagency cooperation in cases in which the pooling of the resources of two or more Federal departments, agencies, or instrumentalities under existing programs could further efforts to meet such priorities or would eliminate duplication of effort; and

(D) suggested legislation to establish new Federal programs considered to be necessary if such priorities are to be met.

Budget review.

(4) **BUDGET REVIEW.**—The Plan shall contain a description of actions taken by the Administrator and the Director to coordinate the budget review process for the purpose of ensuring interagency coordination and cooperation in (A) the carrying out of Federal ocean pollution research and development and monitoring programs; and (B) eliminating unnecessary duplication of effort among such programs.

"Plan Period."

(c) For purposes of this section, the term "Plan period" means—

(1) with respect to the Plan as required to be submitted on February 15, 1979, the period of 5 fiscal years beginning on October 1, 1978; and

(2) with respect to each revision of the Plan, the period of 5 fiscal years beginning on October 1 of the year before the year in which the revision is required to be prepared under subsection (a).

33 USC 1704.

SEC. 5. COMPREHENSIVE OCEAN POLLUTION PROGRAM IN THE ADMINISTRATION.

Establishment.

(a) **ESTABLISHMENT OF PROGRAM.**—The Administrator shall establish within the Administration a comprehensive, coordinated, and effective ocean pollution research and development and monitoring program. The Administrator shall carry out all projects and activities under the program in a manner consistent with the Plan.

(b) **CONTENT OF THE PROGRAM.**—The program required to be established under subsection (a) shall include, but not be limited to—

- (1) all projects and activities relating to ocean pollution research and development and monitoring for which the Administrator has responsibility under provisions of law (including, but not limited to, title II of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1441-1444)) other than paragraph (2);
- (2) such projects and activities addressed to the priorities set forth in the Plan pursuant to section 4(b)(1)(B) that can be appropriately conducted within the Administration; and
- (3) the provision of financial assistance under section 6.

SEC. 6. FINANCIAL ASSISTANCE.

(a) **GRANTS AND CONTRACTS.**—The Administrator may provide financial assistance in the form of grants or contracts for research and development and monitoring projects or activities which are needed to meet priorities set forth in the Plan pursuant to section 4(b)(1)(B), if such priorities are not being adequately addressed by any Federal department, agency, or instrumentality.

(b) **APPLICATIONS FOR ASSISTANCE.**—Any person, including institutions of higher education and departments, agencies, and instrumentalities of the Federal Government or of any State or political subdivision thereof, may apply for financial assistance under this section for the conduct of projects and activities described in subsection (a), and, in addition, specific proposals may be invited. Each application for financial assistance shall be made in writing in such form and manner, and contain such information, as the Administrator may require. The Administrator may enter into contracts under this section without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5).

(c) **EXISTING PROGRAMS.**—The projects and activities supported by grants or contracts made or entered into under this section shall, to the maximum extent practicable, be administered through existing Federal programs (including, but not limited to, the National Sea Grant Program) concerned with ocean pollution research and development and monitoring.

(d) **ACTION BY ADMINISTRATOR.**—The Administrator shall act upon each application for a grant or contract under this section within six months after the date on which all required information is received by the Administrator from the applicant. Each grant made or contract entered into under this section shall be subject to such terms and conditions as the Secretary deems necessary in order to protect the interests of the United States. The total amount paid pursuant to any such grant or contract may, in the discretion of the Administrator, be up to 100 percent of the total cost of the project or activity involved.

(e) **RECORDS.**—Each recipient of financial assistance under this section shall keep such records as the Administrator shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or activity in connection with which such assistance was given or used, the amount of that portion of the cost of the project or activity which was supplied by other sources, and such other records as will facilitate an effective audit. Such records shall be maintained for three years after the completion of such project or activity. The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and

33 USC 1705.

Grants and contracts.

Contract authority.

Recordkeeping.

Accessibility.

records of receipts which, in the opinion of the Administrator or of the Comptroller General, may be related or pertinent to such financial assistance.

33 USC 1706. SEC. 7. INTERAGENCY COOPERATION.

The head of each department, agency, or other instrumentality of the Federal Government which is engaged in or concerned with, or which has authority over, programs relating to ocean pollution research and development and monitoring—

(1) shall cooperate with the Administrator in carrying out the purposes of this Act;

(2) may, upon written request from the Administrator or Director, make available to the Administrator or Director, on a reimbursable basis or otherwise, such personnel (with their consent and without prejudice to their position and rating), services, or facilities as may be necessary to assist the Administrator or the Director to achieve the purposes of this Act; and

(3) shall, upon a written request from the Administrator or Director, furnish such data or other information as the Administrator or Director deems necessary to fulfill the purposes of this Act.

33 USC 1707. SEC. 8. DISSEMINATION OF INFORMATION.

The Administrator shall ensure that the results, findings, and information regarding ocean pollution research and development and monitoring programs conducted or sponsored by the Federal Government be disseminated in a timely manner, and in useful forms, to relevant departments, agencies, and instrumentalities of the Federal Government, and to other persons having an interest in ocean pollution research and development and monitoring.

33 USC 1708. SEC. 9. EFFECT ON OTHER LAWS.

Nothing in this Act shall be construed to amend, restrict, or otherwise alter the authority of any Federal department, agency, or instrumentality, under any law, to undertake research and development and monitoring relating to ocean pollution.

33 USC 1709. SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Administration for the purposes of carrying out this Act not to exceed \$5,000,000 for the fiscal year ending September 30, 1979.

Approved May 8, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 95-626 pt. 1 (Comm. on Science and Technology) and 95-626 pt. 2 (Comm. on Merchant Marine and Fisheries).

CONGRESSIONAL RECORD:

Vol. 123 (1977): Aug. 3, considered and passed Senate.

Vol. 124 (1978): Feb. 28, considered and passed House, amended.

Apr. 24, Senate agreed to House amendment.

**1980 Amendment to the National Ocean
Pollution Research and Development and Monitoring
Planning Act of 1978***

* Pub. L. 96-255, 94 Stat. 420 (1980).

Public Law 96-255
96th Congress

An Act

May 30, 1980

[H.R. 6615]

To amend the National Ocean Pollution Research and Development and Monitoring Planning Act of 1978 to authorize appropriations to carry out the provisions of such Act for fiscal years 1981 and 1982, and for other purposes.

National Ocean
Pollution
Research and
Development
and Monitoring
Planning Act of
1978,
amendment.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 10 of the National Ocean Pollution Research and Development and Monitoring Planning Act of 1978, as amended (33 U.S.C. 1709), is amended—

(1) by striking out “and” after “1979,” and

(2) by striking out “1980.” and inserting in lieu thereof “1980, not to exceed \$3,000,000 for the fiscal year ending September 30, 1981, and not to exceed \$4,000,000 for the fiscal year ending September 30, 1982.”

Lead Federal
agency for plan.

SEC. 2. Section 4(a) of the National Ocean Pollution Research and Development and Monitoring Planning Act of 1978 (33 U.S.C. 1703(a)) is amended by striking out “February” immediately after “submitted by” and inserting in lieu thereof “September”.

Name change.
33 USC 1701
note.

SEC. 3. Section 1 of the National Ocean Pollution Research and Development and Monitoring Planning Act of 1978 is amended by striking out “Research and Development and Monitoring”.

Approved May 30, 1980.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 96-893, Pt. 1 (Comm. on Merchant Marine and Fisheries) and No. 96-893, Pt. 2 (Comm. on Science and Technology).

SENATE REPORT No. 96-691 accompanying S. 2687 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD, Vol. 126 (1980):

May 5, considered and passed House.

May 15, considered and passed Senate in lieu of S. 2687.

**National Oil and Hazardous Substances Pollution
Contingency Plan 1982***

* 40 C.F.R. §300 (1982).

SUBCHAPTER J—SUPERFUND PROGRAMS

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

Subpart A—Introduction

Sec.

- 300.1 Purpose and objectives.
- 300.2 Authority.
- 300.3 Scope.
- 300.4 Application.
- 300.5 Abbreviations.
- 300.6 Definitions.

Subpart B—Responsibility

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- 300.22 Coordination among and by Federal agencies.
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- 300.31 Organizational concepts.
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- 300.33 Response operations.
- 300.34 Special forces and teams.
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- 300.36 Communications.
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Subpart D—Plans

- 300.41 Regional and local plans.
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Subpart E—Operational Response Phases for Oil Removal

- 300.51 Phase I—Discovery and notification.
- 300.52 Phase II—Preliminary assessment and initiation of action.
- 300.53 Phase III—Containment, countermeasures, clean-up and disposal.
- 300.54 Phase IV—Documentation and cost recovery.
- 300.55 General pattern of response.
- 300.56 Pollution reports.
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- 300.58 Funding.

Subpart F—Hazardous Substance Response

- 300.61 General.
- 300.62 State role.
- 300.63 Phase I—Discovery and notification.
- 300.64 Phase II—Preliminary assessment.
- 300.65 Phase III—Immediate removal.

Sec.

- 300.66 Phase IV—Evaluation and determination of appropriate response—planned removal and remedial action.
- 300.67 Phase V—Planned removal.
- 300.68 Phase VI—Remedial action.
- 300.69 Phase VII—Documentation and cost recovery.
- 300.70 Methods of remedying releases.
- 300.71 Worker health and safety.

Subpart G—Trustees for Natural Resources

- 300.72 Designation of Federal trustees.
- 300.73 State trustees.
- 300.74 Responsibilities of trustees.

Subpart H—Use of Dispersants and Other Chemicals

- 300.81 General.

APPENDIX A—UNCONTROLLED HAZARDOUS WASTE SITE RANKING SYSTEM; A USERS MANUAL

APPENDIX B—NATIONAL PRIORITIES LIST

AUTHORITY: Sec. 105, Pub. L. 96-510, 94 Stat. 2764, 42 U.S.C. 9605 and sec. 311(c)(2), Pub. L. 92-500, as amended; 86 Stat. 865, 33 U.S.C. 1321(c)(2); Executive Order 12316, 47 FR 42237 (August 20, 1981); Executive Order 11735, 38 FR 21243 (August 1973).

SOURCE: 47 FR 31202, July 16, 1982, unless otherwise noted.

Subpart A—Introduction

§ 300.1 Purpose and objectives.

The purpose of the National Oil and Hazardous Substances Pollution Contingency Plan (Plan) is to effectuate the response powers and responsibilities created by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and the authorities established by section 311 of the Clean Water Act (CWA), as amended.

§ 300.2 Authority.

The Plan is required by section 105 of CERCLA, 42 U.S.C. 9605, and by section 311(c)(2) of the CWA, as amended, 33 U.S.C. 1321(c)(2). In Executive Order 12316 (46 FR 42237) the President delegated to the Environmental Protection Agency the responsibility for the amendment of the NCP and all of the other functions vested

§ 300.3

in the President by section 105 of CERCLA. Amendments to the NCP shall be coordinated with members of the National Response Team prior to publication for notice and comment. Amendments shall also be coordinated with the Federal Emergency Management Agency and the Nuclear Regulatory Commission in order to avoid inconsistent or duplicative requirements in the emergency planning responsibilities of those agencies.

§ 300.3 Scope.

(a) The Plan applies to all Federal agencies and is in effect for:

(1) The navigable waters of the United States and adjoining shorelines, for the contiguous zone, and the high seas beyond the contiguous zone in connection with activities under the Outer Continental Shelf Lands Act or the Deep Water Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976). (See sections 311(b)(1) and 502(7) of the Clean Water Act.)

(2) Releases or substantial threats of releases of hazardous substances into the environment, and releases or substantial threats of releases of pollutants or contaminants which may present an imminent and substantial danger to public health or welfare.

(b) The Plan provides for efficient, coordinated and effective response to discharges of oil and releases of hazardous substances, pollutants and contaminants in accordance with the authorities of CERCLA and the CWA. It provides for:

(1) Division and specification of responsibilities among the Federal, State and local governments in response actions, and appropriate roles for private entities.

(2) The national response organization that may be brought to bear in response actions, including description of the organization, response personnel and resources that are available to respond.

(3) The establishment of requirements for Federal regional and Federal local contingency plans, and encour-

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agement of pre-planning for response by other levels of government.

(4) Procedures for undertaking removal operations pursuant to section 311 of the Clean Water Act.

(5) Procedures for undertaking response operations pursuant to CERCLA.

(6) Designation of trustees for natural resources for purposes of CERCLA.

(7) National policies and procedures for the use of dispersants and other chemicals in removal and response actions.

(c) In implementing this Plan, consideration shall be given to the Joint Canada/U.S. Contingency Plan; the U.S./Mexico Joint Contingency Plan and international assistance plans and agreements, security regulations and responsibilities based on international agreements, Federal statutes and executive orders. Actions taken pursuant to this Plan shall conform to the provisions of international joint contingency Plans, where they are applicable. The Department of State should be consulted prior to taking any action which may affect its activities.

§ 300.4 Application.

The Plan is applicable to response taken pursuant to the authorities under CERCLA and section 311 of the CWA.

§ 300.5 Abbreviations.

(a) Department and Agency Title Abbreviations.

DOC—Department of Commerce
DOD—Department of Defense
DOE—Department of Energy
DOI—Department of the Interior
DOJ—Department of Justice
DOL—Department of Labor
DOS—Department of State
DOT—Department of Transportation
EPA—Environmental Protection Agency
FEMA—Federal Emergency Management Agency
HHS—Department of Health and Human Services
NIOSH—National Institute for Occupational Safety and Health
NOAA—National Oceanic and Atmospheric Administration
OSHA—Occupational Safety and Health Administration
USCG—U.S. Coast Guard
USDA—U.S. Department of Agriculture

(b) Operational Title Abbreviations.

ERT—Environmental Response Team
 FCO—Federal Coordinating Officer
 NRC—National Response Center
 NRT—National Response Team
 NSF—National Strike Force
 OSC—On-Scene Coordinator
 PAAT—Public Affairs Assist Team
 PIAT—Public Information Assist Team
 RRC—Regional Response Center
 RRT—Regional Response Team
 SSC—Scientific Support Coordinator

§ 300.6 Definitions.

Terms not defined in this section have the meaning given by CERCLA or the CWA.

Claim, as defined by section 101(4) of CERCLA, means a demand in writing for a sum certain.

Claimant, as defined by section 101(5) of CERCLA, means any person who presents a claim for compensation under CERCLA.

Coastal zone, as defined for the purpose of this Plan, means all U.S. waters subject to the tide, U.S. waters of the Great Lakes, specified ports and harbors on the inland rivers, waters of the contiguous zone, other waters of the high seas subject to this Plan, and the land surface or land substrata, ground waters, and ambient air proximal to those waters. The term coastal zone delineates an area of Federal responsibility for response action. Precise boundaries are determined by EPA/USCG agreements and identified in Federal regional contingency plans.

Contiguous zone means the zone of the high seas, established by the United States under Article 24 of the Convention on the Territorial Sea and Contiguous Zone, which is contiguous to the territorial sea and which extends nine miles seaward from the outer limit of the territorial sea.

Discharge, as defined by section 311(a)(2) of CWA, includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping of oil. For purposes of this Plan, discharge shall also mean substantial threat of discharge.

Drinking water supply, as defined by section 101(7) of CERCLA, means any raw or finished water source that is or may be used by a public water system (as defined in the Safe Drinking

Water Act) or as drinking water by one or more individuals.

Environment, as defined by section 101(8) of CERCLA, means (a) the navigable waters of the United States, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the U.S. under the Fishery Conservation and Management Act of 1976, and (b) any other surface water, ground water, drinking water supply, land surface and subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.

Facility, as defined by section 101(9) of CERCLA, means (a) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (b) any site or area where a hazardous substance has been deposited, stored, disposed of or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

Federally permitted release, as defined by section 101(10) of CERCLA, means (a) discharges in compliance with a permit under section 402 of the Federal Water Pollution Control Act; (b) discharges resulting from circumstances identified and reviewed and made part of the public record with respect to a permit issued or modified under section 402 of the Federal Water Pollution Control Act and subject to a condition of such permit; (c) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Federal Water Pollution Control Act, which are caused by events occurring within the scope of relevant operating or treatment systems; (d) discharges in compliance with a legally enforceable permit under section 404 of the Federal Water Pollution Control Act; (e) releases in compliance with a legally enforceable final permit issued pursuant to section 3005 (a) through (d) of the Solid Waste Disposal Act from a hazardous waste treatment, storage, or disposal facility when such permit spe-

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cifically identifies the hazardous substances and makes such substances subject to a standard of practice, control procedure or bioassay limitation or condition, or other control on the hazardous substances in such releases; (f) any release in compliance with a legally enforceable permit issued under section 102 or section 103 of the Marine Protection, Research and Sanctuaries Act of 1972; (g) any injection of fluids authorized under Federal underground injection control programs or State programs submitted for Federal approval (and not disapproved by the Administrator of EPA) pursuant to part C of the Safe Drinking Water Act; (h) any emission into the air subject to a permit or control regulation under section 111, section 112, title 1 part C, title 1 part D, or State implementation plans submitted in accordance with Section 110 of the Clean Air Act (and not disapproved by the Administrator of EPA), including any schedule or waiver granted, promulgated, or approved under these sections; (i) any injection of fluids or other materials authorized under applicable State law (1) for the purpose of stimulating or treating wells for the production of crude oil, natural gas, or water, (2) for the purpose of secondary, tertiary, or other enhanced recovery of crude oil or natural gas, or (3) which are brought to the surface in conjunction with the production of crude oil or natural gas and which are re injected; (j) the introduction of any pollutant into a publicly-owned treatment works when such pollutant is specified in and in compliance with applicable pretreatment standards of section 307 (b) or (c) of the CWA and enforceable requirements in a pretreatment program submitted by a State or municipality for Federal approval under section 402 of such Act, and (k) any release of source, special nuclear, or by-product material, as those terms are defined in the Atomic Energy Act of 1954, in compliance with a legally enforceable license, permit, regulation, or order issue pursuant to the Atomic Energy Act of 1954.

Fund or Trust Fund means the Hazardous Substance Response Trust Fund established by section 221 of CERCLA.

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Ground water, as defined by section 101(12) of CERCLA, means water in a saturated zone or stratum beneath the surface of land or water.

Hazardous substance, as defined by section 101(14) of CERCLA, means (a) any substance designated pursuant to section 311(b)(2)(A) of the CWA; (b) any element, compound, mixture, solution, or substance designated pursuant to section 102 of CERCLA; (c) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress); (d) any toxic pollutant listed under section 307(a) of the CWA; (e) any hazardous air pollutant listed under section 112 of the Clean Air Act; and (f) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act. The terms do not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (a) through (f) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

Inland zone means the environment inland of the coastal zone excluding the Great Lakes and specified ports and harbors of inland rivers. The term inland zone delineates the area of Federal responsibility for response action. Precise boundaries are determined by EPA/USCG agreement and identified in Federal regional contingency plans.

Lead agency means the Federal agency (or State agency operating pursuant to a contract or cooperative agreement executed pursuant to section 104(d)(1) of CERCLA) that provides the on-scene coordinator or the responsible official.

Natural Resources, as defined by section 101(16) of CERCLA, means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, apper-

taining to, or otherwise controlled by the United States (including the resources of fishery conservation zones established by the Fishery Conservation and Management Act of 1976), any State or local government or any foreign government.

Offshore facility, as defined by section 101(17) of CERCLA and section 311(a)(11) of the CWA, means any facility of any kind located in, on, or under any of the navigable waters of the U.S. and any facility of any kind which is subject to the jurisdiction of the U.S. and is located in, on, or under any other waters, other than a vessel or a public vessel.

Oil, as defined by section 311(a)(1) of CWA, means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

Oil pollution fund means the fund established by section 311(k) of the CWA.

Onshore facility, (a) as defined by section 101(18) of CERCLA means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under any land or non-navigable waters within the United States; and (b) as defined by section 311(a)(10) of CWA means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under any land within the United States other than submerged land.

On-Scene Coordinator means the Federal official pre-designated by the EPA or the USCG (or a State official acting pursuant to a contract or cooperative agreement executed pursuant to section 104(d)(1) of CERCLA) to coordinate and direct Federal responses under this Plan; provided, however, that with respect to releases from DOD facilities or vessels, the OSC shall be designated by DOD.

Person, as defined by section 101(21) of CERCLA, means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, U.S. Government, State, municipality, commission, political subdivision of a State, or any interstate body.

Plan means the National Oil and Hazardous Substances Pollution Contingency Plan published under section 311(c) of the CWA and revised pursuant to section 105 of CERCLA.

Pollutant or contaminant, as defined by section 104(a)(2) of CERCLA, shall include, but not be limited to, any element, substance, compound, or mixture, including disease causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingesting through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformation, in such organisms or their offspring. The term does not include petroleum, including crude oil and any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under section 101(14)(A) through (F) of CERCLA, nor does it include natural gas, liquified natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and synthetic gas).

Release, as defined by section 101(22) of CERCLA, means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, but excludes (a) any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons; (b) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; (c) release of source, by-product or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such act, or, for the purposes of section 104 of CERCLA or any other response action, any release of source, by-product, or special nuclear material from any processing site designated

under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978; and (d) the normal application of fertilizer. For the purposes of this Plan, release also means substantial threat of release.

Remove or removal, as defined by section 311(a)(8) of CWA refers to removal of oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare. As defined by section 101(23) of CERCLA, remove or removal means the clean-up or removal of released hazardous substances from the environment; such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment; such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances; the disposal of removed material; or the taking or such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or the environment, which may otherwise result from such release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under section 104(b) of CERCLA, and any emergency assistance which may be provided under the Disaster Relief Act of 1974.

Remedy or remedial action, as defined by section 101(24) of CERCLA, means those actions consistent with permanent remedy taken instead of, or in addition to, removal action in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, clean-up of released

hazardous substances or contaminated materials recycling or reuse, diversion, destruction, segregation or reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment. The term includes the costs of permanent relocation of residents and businesses and community facilities where the President determines that, alone or in combination with other measures, such relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances or may otherwise be necessary to protect the public health or welfare. The term does not include offsite transport of hazardous substances, or the storage, treatment, destruction, or secure disposition offsite of such hazardous substances or contaminated materials unless the President determines that such actions (a) are more cost-effective than other remedial actions; (b) will create new capacity to manage in compliance with subtitle C of the Solid Waste Disposal Act, hazardous substances in addition to those located at the affected facility; or (c) are necessary to protect public health or welfare or the environment from a present or potential risk which may be created by further exposure to the continued presence of such substances or materials.

Respond or response, as defined by section 101(25) of CERCLA, means remove, removal, remedy, or remedial action.

Responsible official refers to the Federal official (or State official acting pursuant to a contract or cooperative agreement executed pursuant to section 104(d)(1) of CERCLA), assigned by the lead agency, responsible for coordinating planned removals, remedial actions and related activities under Subpart F of this plan. Where reference is made to the responsibilities and authorities of an OSC, those responsibilities and authorities also apply to a responsible official.

Size classes of discharges refers to the following size classes of oil discharges which are provided as guidance to the OSC and serve as the criteria for the actions delineated in Subpart E. They are not meant to imply associated degrees of hazard to public health or welfare, nor are they a measure of environmental damage. Any oil discharge that poses a substantial threat to the public health or welfare or results in critical public concern shall be classified as a major discharge regardless of the following quantitative measures:

(a) *Minor discharge* means a discharge to the inland waters of less than 1,000 gallons of oil or a discharge to the coastal waters of less than 10,000 gallons of oil.

(b) *Medium discharge* means a discharge of 1,000 to 10,000 gallons of oil to the inland waters or a discharge of 10,000 to 100,000 gallons of oil to the coastal waters.

(c) *Major discharge* means a discharge of more than 10,000 gallons of oil to the inland waters or more than 100,000 gallons of oil to the coastal waters.

Trustee means any Federal natural resources management agency designated in Subpart G of this plan, and any State agency which may prosecute claims for damages under section 107(f) of CERCLA.

United States, as defined by section 311(2)(5) of CWA, refers to the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands. As defined by section 101(27) of CERCLA, United States and State include the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, The Commonwealth of the Northern Marianas and any other territory or possession over which the U.S. has jurisdiction.

Volunteer means any individual accepted to perform services by a Federal agency which has authority to accept volunteer services (example: see 16 U.S.C. 742f(c)). A volunteer is sub-

ject to the provisions of the authorizing statute, and § 300.25 of this Plan.

Subpart B—Responsibility

§ 300.21 Duties of President delegated to Federal agencies.

(a) In Executive Order 11735 and Executive Order 12316 the President delegated certain functions and responsibilities vested in him by the CWA and CERCLA, respectively. Responsibilities so delegated shall be responsibilities of Federal agencies under this Plan unless:

(1) Responsibility is redelegated pursuant to section 8(f) of Executive Order 12316, or

(2) Executive Order 11735 or Executive Order 12316 is amended or revoked.

§ 300.22 Coordination among and by Federal agencies.

(a) Federal agencies should coordinate their planning and response activities through the mechanisms described in Subpart C of this Plan and other means as may be appropriate.

(b) Federal agencies should coordinate planning and response action with affected State and local government and private entities.

(c) Federal agencies with facilities or other resources which may be useful in a Federal response situation should make those facilities or resources available consistent with agency capabilities and authorities.

(d) When the Administrator of EPA or the Secretary of the Department in which the Coast Guard is operating determines:

(1) That there is an imminent and substantial threat to the public health or welfare because of a discharge of oil from any offshore or onshore facility; or

(2) That there may be an imminent and substantial endangerment to the public health or welfare of the environment because of a release or threatened release of a hazardous substance, from a facility; he/she may request the Attorney General to secure the relief necessary to abate the threat. The action described here is in addition to any actions taken by a

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State or local government for the same purpose.

(e) In accordance with section 311(d) of CWA, whenever a marine disaster in or upon the navigable waters of the United States has created a substantial threat of a pollution hazard to the public health or welfare, because of a discharge or an imminent discharge from a vessel of large quantities of oil or hazardous substances designated pursuant to section 311(b)(2)(A) of CWA, the United States may:

(1) Coordinate and direct all public and private efforts to abate the threat;

(2) Summarily remove and, if necessary, destroy the vessel by whatever means are available without regard to any provisions of law governing the employment of personnel or the expenditure of appropriated funds. The authority for these actions has been delegated under Executive Order 11735 to the Administrator of EPA and the Secretary of the Department in which the Coast Guard is operating, respectively, for the waters for which each designates the OSC under this Plan.

(f) Response actions to remove discharges originating from the Outer Continental Shelf Lands Act operations shall be in accordance with this Plan.

(g) Where appropriate, discharges of radioactive materials shall be handled pursuant to the appropriate federal radiological plans.

§ 300.23 Other assistance by Federal agencies.

(a) Each of the Federal agencies listed in paragraph (b) of this section has duties established by statute, executive order, or Presidential directive which may be relevant to Federal response action following or in prevention of a discharge of oil or a release of a hazardous substance, pollutant or contaminant. These duties may also be relevant to the rehabilitation, restoration, and replacement of damaged or lost natural resources. Federal regional contingency plans should call upon agencies to carry out these duties in a coordinated manner.

(b) The following Federal agencies may be called upon by an OSC during the planning or implementation of a

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response to provide assistance in their respective areas of expertise, consistent with their capabilities and legal authorities:

(1) Department of Agriculture.

(2) Department of Commerce.

(3) Department of Defense.

(4) Department of Energy.

(5) Federal Emergency Management Agency.

(6) Department of Health and Human Services.

(7) Department of the Interior.

(8) Department of Justice.

(9) Department of Labor.

(10) Department of State.

(11) Department of Transportation.

(12) Environmental Protection Agency.

(c) In addition to their general responsibilities under paragraph (a) of this section Federal agencies should:

(1) Make necessary information available to the NRT, RRTs, and OSCs.

(2) Inform the NRT and RRTs (consistent with national security considerations) of changes in the availability of resources that would affect the operations of the Plan.

(3) Provide representative as necessary to the NRT and RRTs and assist RRTs and OSCs in formulating Federal regional and Federal local contingency plans.

(d) All Federal agencies are responsible for reporting releases of hazardous substances and discharges of oil from facilities or vessels which are under their jurisdiction or control in accordance with section 103 of CERCLA, and Subparts E and F of this Plan.

(e) Executive Order 12316 delegates to the USCG and EPA all authorities under sections 104 (a) and (b) and 101(24) of CERCLA subject to the following:

(1) HHS is delegated all authorities under section 104(b) of CERCLA relating to a determination that illness, disease or complaints thereof may be attributable to exposure to a hazardous substance, pollutant or contaminant. (In addition, section 104(l) of CERCLA calls upon HHS to: establish appropriate disease/exposure registries; conduct appropriate health surveys and studies; develop and provide appropriate testing for exposed individuals; de-

velop, maintain and provide information on health effects of toxic substances; and maintain a list of areas restricted or closed because of toxic substance contamination.)

(2) FEMA is delegated the authorities vested in the President by section 104(a) of CERCLA to the extent they require permanent relocation of residents, businesses, and community facilities or temporary evacuation and housing of threatened individuals not otherwise provided for. (FEMA is also delegated authority under section 101(24) of CERCLA to the extent they require a determination by the President that "permanent relocation of residents and businesses and community facilities" is included within the terms "remedy" and "remedial action" as defined in section 101(24) of CERCLA.)

(3) DOD is delegated all authority of section 104 (a) and (b) of CERCLA with respect to releases from DOD facilities or vessels, including vessels owned or bareboat chartered and operated.

(f) If the situation is beyond the capability of State and local governments and the statutory authority of Federal agencies, the President, acting upon a request by the Governor, may declare a major disaster or emergency and appoint a Federal Coordinating Officer to assume responsibility for direction and control of the Federal response.

§ 300.24 State and local participation.

(a) Each State governor is requested to assign an office or agency to represent the State on the appropriate RRT. Local governments are invited to participate in activities on the appropriate RRT as may be provided by State law or arranged by the State's representative. The State's representative may participate fully in all facets of activities of the appropriate RRT and is encouraged to designate the element of the State government that will direct State supervised response operations.

(b) State and local government agencies are encouraged to include contingency planning for response, consistent with this Plan and Regional Con-

tingency Plans, in all emergency and disaster planning.

(c) States are encouraged to use State authorities to compel potentially responsible parties to undertake response actions, or to themselves undertake response actions which are not eligible for Federal funding.

(d) States may enter into contracts or cooperative agreements pursuant to section 104(c)(3) and (d) of CERCLA or section 311(c)(2)(H) of the CWA, as appropriate, to undertake actions authorized under Subparts E and F of this Plan. Requirements for entering into these agreements are included in §§ 300.58 and 300.62 of this Plan.

§ 300.25 Non-government participation.

(a) Industry groups, academic organizations, and others are encouraged to commit resources for response operations. Specific commitments should be listed in Federal regional and Federal local contingency plans.

(b) It is particularly important to use the valuable technical and scientific information generated by the non-government local community along with those from Federal and State government to assist the OSC in devising clean-up strategies where effective standard techniques are unavailable, and to ensure that pertinent research will be undertaken to meet national needs.

(c) Federal local contingency plans should establish procedures to allow for well-organized, worthwhile, and safe use of volunteers. Local plans should provide for the direction of volunteers by the OSC, or by other Federal, State or local officials knowledgeable in contingency operations and capable of providing leadership. Local plans also should identify specific areas in which volunteers can be used, such as beach surveillance, logistical support, and bird and wildlife treatment. Unless specifically requested by the OSC, volunteers generally should not be used for physical removal or remedial activities. If, in the judgement of the OSC or an appropriate participating agency, dangerous conditions exist, volunteers shall be restricted from on-scene operations.

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(d) If any person other than the Federal government or a State or person operating under contract or cooperative agreement with the United States, takes response action and intends to seek reimbursement from the Fund, such actions to be in conformity with this Plan for purposes of section 111(a)(2) of CERCLA may only be undertaken if such person notifies the Administrator of EPA or his/her designee prior to taking such action and receives prior approval to take such action.

Subpart C—Organization

§ 300.31 Organizational concepts.

Three fundamental kinds of activity are performed pursuant to the Plan: planning and coordination, operations at the scene of a discharge and/or release, and communications. The organizational elements created to perform these activities are discussed below in the context of their roles in these activities.

§ 300.32 Planning and coordination.

(a) National planning and coordination is accomplished through the National Response Team (NRT).

(1) The NRT consists of representatives from the agencies named in § 300.23. Each agency shall designate a member to the team and sufficient alternates to ensure representation, as agency resources permit. Other agencies may request membership on the NRT by forwarding such requests to the chairman of the NRT.

(2) Except for periods of activation because of a response action, the representative of EPA shall be the chairman and the representative of USCG shall be the vice chairman of the NRT. The vice chairman shall maintain records of NRT activities along with national, regional, and local plans for response actions. When the NRT is activated for response action, the chairman shall be the representative of the Federal lead agency.

(3) While the NRT desires to achieve a consensus on all matters brought before it, certain matters may prove unresolvable by this means. In such cases, each cabinet, department or agency serving as a participating

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agency on the NRT may be accorded one vote in NRT proceedings.

(4) The NRT may establish such by-laws and committees as it deems appropriate to further the purposes for which it is established.

(5) When the NRT is not activated for a response action, it shall serve as a standing committee to evaluate methods of responding to discharges or releases, to recommend needed changes in the response organization and to recommend revisions to this Plan.

(6) The NRT may consider and make recommendations to appropriate agencies on the training, equipping and protection of response teams and necessary research, development, demonstration, and evaluation to improve response capabilities.

(7) Direct planning and preparedness responsibilities of the NRT include:

(i) Maintaining national readiness to respond to a major discharge of oil or release of a hazardous substance or pollutant or contaminant which is beyond regional capabilities;

(ii) Monitoring incoming reports from all RRTs and activating when necessary;

(iii) Reviewing regional responses to oil discharges and hazardous substance releases, including an evaluation of equipment readiness and coordination among responsible public agencies and private organizations; and

(iv) Developing procedures to ensure the coordination of Federal, State, and local governments and private response to oil discharges and releases of hazardous substances, pollutants or contaminants.

(8) The NRT may consider matters referred to it for settlement by an RRT.

(b) The RRT serves as the regional body for planning and preparedness actions before a response action is taken and for coordination and advice during such action. The RRT consists of regional representatives of the participating agencies and representatives of State governments (and local governments as agreed upon with States).

(1) Except when the RRT is activated for a removal incident, the repre-

representatives of EPA and USCG shall act as co-chairmen.

(2) Each participating agency should designate one member and at least one alternate member to the RRT. Participating States may also designate one member and at least one alternate member to the Team. All agencies and States may also provide additional representatives as observers to meetings of the RRT.

(3) RRT members should designate representatives from their agencies to work with OSCs in developing Federal local contingency plans, providing for the use of agency resources, and in responding to discharges and releases (see § 300.43).

(4) Federal regional and Federal local plans should adequately provide the OSC with assistance from the Federal agencies commensurate with agencies' resources, capabilities, and responsibilities within the region. During a response action, the members of the RRT should seek to make available the resources of their agencies to the OSC as specified in the Federal regional and Federal local contingency plans.

(5) Affected States are encouraged to participate actively in all RRT activities (see § 300.24(a)), to designate representatives to work with the RRT and OSCs in developing Federal regional and Federal local plans, to plan for and make available State resources, and to serve as the contact point for coordination of response with local government agencies whether or not represented on the RRT.

(6) The RRT serves as a standing committee to recommend changes in the regional response organization as needed, to revise the regional plan as needed, and to evaluate the preparedness of the agencies and the effectiveness of local plans for the Federal response to discharges and releases. The RRT should:

(i) Make continuing review of regional and local responses to discharges or releases, considering available legal remedies, equipment readiness and coordination among responsible public agencies and private organizations.

(ii) Based on observations of response operations, recommend revi-

sions of the National Contingency Plan to the NRT.

(iii) Consider and recommend necessary changes based on continuing review of response actions in the region.

(iv) Review OSC actions to help ensure that Federal regional and Federal local contingency plans are developed satisfactorily.

(v) Be prepared to respond to major discharges or releases outside the region.

(vi) Meet at least semi-annually to review response actions carried out during the preceding period, and consider changes in Federal regional and Federal local contingency plans.

(vii) Provide letter reports on their activities to the NRT twice a year, no later than January 31 and July 31. At a minimum, reports should summarize recent activities, organizational changes, operational concerns, and efforts to improve State and local conditions.

(c) The OSC is responsible for developing any Federal local contingency plans for the Federal response in the area of the OSC's responsibility. This may be accomplished in cooperation with the RRT and designated State and local representatives (see § 300.43). Boundaries for Federal local contingency plans shall coincide with those agreed upon between EPA, DOD and the USCG (subject to Executive Order 12316) to determine OSC areas of responsibility and should be clearly indicated in the regional contingency plan. Where practicable, consideration should be given to jurisdictional boundaries established by State and local plans.

(d) Scientific support for the development of regional and local plans is organized by appropriate agencies to provide special expertise and assistance. Generally, the Scientific Support Coordinator (SSC) for plans encompassing the coastal area will be provided by NOAA, and the SSC for the inland area will be provided by EPA or DOI. This delineation of responsibility may be modified within a region by agreement between DOC, DOI, and EPA representatives to the RRT. SSCs may be obtained from

other agencies if determined to be appropriate by the RRT.

§ 300.33 Response operations.

(a) EPA and USCG shall designate OSCs for all areas in each region provided, however, that DOD shall designate OSCs for releases from DOD facilities and vessels. DOD will be the immediate removal response authority with respect to incidents involving DOD military weapons and munitions. Immediate removal actions involving nuclear weapons should be conducted in accordance with the joint Department of Defense, Department of Energy, and Federal Emergency Management Agency Agreement for Response to Nuclear Incidents and Nuclear Weapons Significant Incidents, of January 8, 1981. The USCG will furnish or provide OSCs for oil discharges and for the immediate removal of hazardous substances, pollutants, or contaminants into or threatening the coastal zone except that the USCG will not provide predesignated OSCs for discharges and releases from hazardous waste management facilities or in similarly chronic incidents. EPA shall furnish or provide OSCs for oil discharges and hazardous substance releases into or threatening the inland zone and, unless otherwise agreed, for all planned removals and remedial actions.

(b) The OSC directs Federal Fund-financed response efforts and coordinates all other Federal efforts at the scene of a discharge or release subject to Executive Order 12316. As part of the planning and preparation for response, the OSCs shall be predesignated by the regional or district head of the lead agency.

(1) The first official from an agency with responsibility under this plan to arrive at the scene of the discharge or release should coordinate activities under this Plan until the OSC arrives.

(2) The OSC shall, to the extent practicable under the circumstances, collect pertinent facts about the discharge or release, such as its source and cause; the existence of potentially responsible parties; the nature, amount, and location of discharged or released materials; the probable direction and time of travel of discharged

or released materials; the pathways to human exposure; potential impact on human health, welfare and safety; the potential impact on natural resources and property which may be affected; priorities for protecting human health, welfare and the environment; and appropriate cost documentation.

(3) The OSC shall direct response operations (see Subparts E and F for descriptive details). The OSC's effort shall be coordinated with other appropriate Federal, State, local and private response agencies.

(4) The OSC shall consult regularly with the RRT in carrying out this Plan and will keep the RRT informed of activities under this Plan.

(5) The OSC shall advise the appropriate State agency (as agreed upon with each State) as promptly as possible of reported discharges and releases.

(6) The OSC shall evaluate incoming information and immediately advise FEMA of potential major disaster situations. In the event of a major disaster or emergency, under the Disaster Relief Act of 1974 (Pub. L. 93-288), the OSC will coordinate any response activities with the Federal Coordinating Officer designated by the President. In addition, the OSC should notify FEMA of situations potentially requiring evacuation, temporary housing, and permanent relocation.

(7) In those instances where a possible public health emergency exists, the OSC should notify the HHS representative to the RRT. Throughout response actions, the OSC may call upon the HHS representative for assistance in determining public health threats and for advice on worker health and safety problems.

(8) All Federal agencies should plan for emergencies and develop procedures for dealing with oil discharges and releases of hazardous substances (designated under section 311(b)(2) of the CWA) from vessels and facilities under their jurisdiction. All Federal agencies, therefore, are responsible for designating the offices that can coordinate response to such incidents in accordance with this Plan and applicable Federal regulations and guidelines. If, in the opinion of the OSC, the responsible Federal agency does not act

promptly or take appropriate action to respond to a discharge or release caused by a facility or vessels under its jurisdiction, the OSC in charge of area where the discharge or release occurs may conduct appropriate response activities. With respect to discharges or releases from Department of Defense (DOD) facilities and vessels, the OSC shall be furnished by the DOD.

(9) The OSC should advise the affected land managing agency and trustees of natural resources, as promptly as possible, of releases and discharges affecting Federal resources under its jurisdiction.

(10) The OSC is responsible for addressing worker health and safety concerns at a response scene, in accordance with §§ 300.57 and 300.71 of this Plan.

(11) The OSC shall submit pollution reports to the RRC and appropriate agencies as significant developments occur during removal actions.

§ 300.34 Special forces and teams.

(a) The National Strike Force (NSF) consists of the Strike Teams established by the USCG on the Atlantic, Pacific and Gulf coasts and includes emergency task forces to provide assistance to the OSC.

(1) The Strike Teams can provide communication support, advice and assistance for oil and hazardous substances removal. These teams also have knowledge of ship salvage, damage control, and diving. Additionally, they are equipped with specialized containment and removal equipment, and have rapid transportation available. When possible, the Strike Teams will train the emergency task forces and assist in the development of regional and local contingency plans.

(2) The OSC may request assistance from the Strike Teams. Requests for a team may be made directly to the Commanding Officer of the appropriate team, the USCG member of the RRT, the appropriate USCG Area Commander, or the Commandant of the USCG through the NRC.

(b) Each USCG OSC manages emergency task forces trained to evaluate, monitor, and supervise pollution responses. Additionally, they have limited "initial aid" response capability to

deploy equipment prior to the arrival of a clean-up contractor, or other response personnel.

(c)(1) The Emergency Response Team (ERT) is established by EPA in accordance with its disaster and emergency responsibilities. The ERT includes expertise in biology, chemistry, hydrology, geology and engineering.

(2) It can provide access to special de-contamination equipment for chemical releases and advice to the OSC in hazard evaluation; risk assessment; multimedia sampling and analysis program; on-site safety, including development and implementation plans; clean-up techniques and priorities; water supply de-contamination and protection; application of dispersants; environmental assessment; degree of clean-up required; and disposal of contaminated material.

(3) The ERT also provides both introductory and intermediate level training courses to prepare response personnel.

(4) OSC or RRT requests for ERT support should be made to the EPA representative on the RRT; the EPA Headquarters, Director, Office of Emergency and Remedial Response; or the appropriate EPA regional emergency coordinator.

(d) When requested by the OSC, the SSC shall serve as a member of the OSC's staff and assist the OSC in fulfilling responsibilities in support of response actions. The extent and nature of SSC involvement in the operational mode shall be determined by the OSC. The SSC may:

(1) Coordinate response from the scientific community to OSC requests for assistance and to requests from the OSC, as appropriate, for performance of environmental assessment.

(2) Serve as the principal liaison for scientific advice from the scientific community to the OSC. The SSC shall ensure that differing scientific views within the scientific community are communicated to the OSC in a timely manner.

(3) The SSC will assist in responding to requests for assistance from State and Federal agencies regarding scientific studies and environmental assessments. Details on provision of access

to scientific support shall be included in regional contingency plans.

(e) The USCG Public Information Assist Team (PIAT) and the EPA Public Affairs Assist Team (PAAT) may help OSCs and regional or district offices meet the demands for public information and participation during major responses. Requests for these teams may be made through the NRC.

(f)(1) The RRT should be activated by the Chairman as an emergency response team when a discharge or release:

(i) Exceeds the response capability available to the OSC in the place where it occurs;

(ii) Transects regional boundaries; or

(iii) May pose a substantial threat to the public health, welfare or to the environment, or to regionally significant amounts of property. Regional contingency plans shall specify detailed criteria for activation of RRTs.

(2) When the RRT is activated for an immediate removal action, the chairman shall be the representative of the lead agency. When the RRT is activated for a Fund-financed planned removal or remedial action, the chairman shall be the representative of EPA.

(3) The RRT may be activated during any pollution emergency by a request from any RRT representative to the chairman of the Team. Request for RRT activation shall later be confirmed in writing. Each representative, or an appropriate alternate, should be notified immediately when the RRT is activated.

(4) During prolonged removal or remedial action, the RRT may not need to be activated or may need to be activated only in a limited sense, or have available only those members of the RRT who are directly affected or can provide direct response assistance.

(5) When the RRT is activated for a discharge or release, agency representatives shall meet at the call of the chairman and may:

(i) Monitor and evaluate reports from the OSC. The RRT may advise the OSC on the duration and extent of Federal response and may recommend to the OSC specific actions to respond to the discharge or release.

(ii) Request other Federal, State or local government, or private agencies to provide resources under their existing authorities to respond to a discharge or release or to monitor response operations.

(iii) Help the OSC prepare information releases for the public and for communication with the NRT.

(iv) If the circumstances warrant, advise the regional or district head of the agency providing the OSC that a different OSC should be designated.

(v) Submit Pollution Reports (POLREPS) to the NRC as significant developments occur.

(6) When the RRT is activated, affected States may participate in all RRT deliberations. State government representatives participating in the RRT have the same status as any Federal member of the RRT.

(7) The RRT can be deactivated by agreement between the EPA and USCG team members. The time of deactivation should be included in the POLREPS.

(g) The NRT should be activated as an emergency response team when an oil discharge or hazardous substance release:

(1) Exceeds the response capability of the region in which it occurs;

(2) Transects regional boundaries;

(3) Involves significant population hazards or national policy issues, substantial amounts of property, or substantial threats to natural resources; or

(4) Is requested by any NRT member.

(h) When activated for a response action, the NRT shall meet at the call of the chairman and may:

(1) Monitor and evaluate reports from the OSC. The NRT may recommend to the OSC, through the RRT, actions to combat the discharge or release.

(2) Request other Federal, State and local governments, or private agencies, to provide resources under their existing authorities to combat a discharge or release or to monitor response operations.

(3) Coordinate the supply of equipment, personnel, or technical advice to the affected region from other regions or districts.

§ 300.35 Multi-regional responses.

(a) If a discharge or release moves from the area covered by one Federal local or Federal regional contingency plan into another area, the authority for removal or response actions should likewise shift. If a discharge or release or substantial threat of discharge or release affects areas covered by two or more regional plans, the response mechanisms of both may be activated. In this case, removal or response actions of all regions concerned shall be fully coordinated as detailed in the regional plans.

(b) There shall be only one OSC at any time during the course of a response operation. Should a discharge or release affect two or more areas, the EPA, DOD and USCG, as appropriate, shall give prime consideration to the area vulnerable to the greatest damage. The RRT shall designate the OSC if EPA, DOD and USCG members are unable to agree on the designation. The NRT shall designate the OSC if members of one RRT or two adjacent RRTs are unable to agree on the designation.

(c) Where the USCG has provided the OSC for emergency response to a release from hazardous waste management facilities located in the coastal zone, the responsibility for response action shall shift to EPA, in accordance with EPA/USCG agreements.

§ 300.36 Communications.

(a) The NRC is the national communications center for activities related to response actions. It is located at USCG Headquarters in Washington, D.C. The NRC receives and relays notices of discharges or releases to the appropriate OSC, disseminates OSC and RRT reports to the NRT when appropriate, and provides facilities for the NRT to use in coordinating a national response action when required.

(b) The Commandant, USCG, will provide the necessary communications, plotting facilities, and equipment for the NRC.

(c) Notice of an oil discharge or a release of a hazardous substance in an amount equal to or greater than the reportable quantity must be made immediately in accordance with 33 CFR Part 153, Subpart B and section 103(a)

of CERCLA, respectively. Notification shall be made to the NRC Duty Officer, HQ USCG, Washington, D.C. telephone (800) 424-8802 (or current local telephone number). All notices of discharges or releases received at the NRC shall be relayed immediately by telephone to the OSC and State.

(d) The RRC provides facilities and personnel for communications, information storage, and other requirements for coordinating response. Each regional plan will specify the location for the RRC.

§ 300.37 Response equipment.

The Spill Cleanup Inventory (SKIM) system is available to help OSCs and RRTs and private parties gain rapid information as to the location of response and support equipment. This inventory is accessible through the NRC and USCG's OSCs. The inventory includes private and commercial equipment, as well as government resources. The RRTs and OSCs shall ensure that data in the system are current and accurate. The USCG is responsible for maintaining and updating the system with RRT and OSC input.

Subpart D—Plans**§ 300.41 Regional and local plans.**

(a) In addition to the National Contingency Plan (NCP), a Federal regional plan shall be developed for each standard Federal region and, where practicable, a Federal local plan shall be developed.

(b) These plans will be available for inspection at EPA regional offices or USCG district offices. Addresses and telephone numbers for these offices may be found in the United States Government Manual (issued annually) or in local telephone directories.

§ 300.42 Regional contingency plans.

(a) The RRTs, working with the States, shall develop Federal regional plans for each standard Federal region. The purpose of these plans is coordination of a timely, effective response by various Federal agencies and other organizations to discharges of oil and releases of hazardous sub-

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stances, pollutants and contaminants in order to protect public health, welfare and the environment. Regional contingency plans should include information on all useful facilities and resources in the region, from government, commercial, academic and other sources. To the greatest extent possible, regional plans will follow the format of the National Contingency Plan.

(b) SSCs shall organize and coordinate the contributions of scientists of each region to the response activities of the OSC and RRT to the greatest extent possible. SSCs, with advice from RRT members, shall also develop the parts of the regional plan that relate to scientific support.

(c) Regional plans shall contain lines of demarcation between the inland and coastal zones, as mutually agreed upon by USCG and EPA.

§ 300.43 Local contingency plans.

(a) Each OSC shall maintain a Federal local plan for response in his or her area of responsibility, where practicable. In areas in which the USCG provides the OSC, such plans shall be developed in all cases. The plan should provide for a well-coordinated response that is integrated and compatible with the pollution response, fire, emergency and disaster plans of local, State and other non-Federal entities. The plan should identify the probable locations of discharges or releases, the available resources to respond to multi-media incidents, where such resources can be obtained, waste disposal methods and facilities consistent with local and State plans developed under the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.), and a local structure for responding to discharges or releases.

(b) While the OSC is responsible for developing Federal local plans, a successful planning effort will depend upon the full cooperation of all the agencies' representatives and the development of local capabilities to respond to discharges or releases. Particular attention should be given, during the planning process, to developing a multi-agency local response team for coordinating on-scene efforts. The RRT should ensure proper liaison

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between the OSC and local representatives.

Subpart E—Operational Response Phases for Oil Removal

§ 300.51 Phase I—Discovery and notification.

(a) A discharge of oil may be discovered through:

(1) A report submitted by the person in charge of the vessel or facility in accordance with statutory requirements;

(2) Deliberate search by patrols; and

(3) Random or incidental observation by government agencies or the public.

(b) Reports of discharges should be made to the NRC or the nearest USCG or EPA office. All reports shall be promptly relayed to the NRC if not previously reported to the responsible OSC. Federal regional and Federal local plans shall provide for prompt reporting to the NRC, RRC, and appropriate State agency (as agreed upon with the State).

(c) Upon receipt of a notification of discharge, the NRC shall promptly notify the OSC. The OSC shall proceed with the following phases as outlined in Federal regional and Federal local plans.

§ 300.52 Phase II—Preliminary assessment and initiation of action.

(a) The OSC for a particular area is responsible for promptly initiating preliminary assessment.

(b) The preliminary assessment shall be conducted using available information, supplemented where necessary and possible by an on-scene inspection. The OSC shall undertake actions to:

(1) Evaluate the magnitude and severity of the discharge or threat to public health and welfare and the environment;

(2) Assess the feasibility of removal;

(3) Determine the existence of potential responsible parties; and

(4) Ensure that jurisdiction exists for undertaking additional response actions.

(c) The OSC, in consultation with legal authorities when appropriate, shall make a reasonable effort to have the discharger voluntarily and

promptly perform removal actions. The OSC shall ensure adequate surveillance over whatever actions are initiated. If effective actions are not being taken to eliminate the threat, or if removal is not being properly done, the OSC shall so advise the responsible party. If the responsible party does not take proper removal actions, or is unknown, or is otherwise unavailable, the OSC shall, pursuant to section 311(c)(1) of the CWA, determine whether authority for a Federal response exists, and, if so, take appropriate response actions. Where practicable, continuing efforts should be made to encourage response by responsible parties.

(d) The OSC should ensure that the trustees of affected natural resources are notified, in order that the trustees may initiate appropriate actions when natural resources have been or are likely to be damaged (see Subpart G).

§ 300.53 Phase III—Containment, countermeasures, clean-up, and disposal.

(a) Defensive actions should begin as soon as possible to prevent, minimize, or mitigate damage to the public health or welfare or the environment. Actions may include: analyzing water samples to determine the source and spread of the oil; controlling the source of discharge; measuring and sampling; damage control or salvage operations; placement of physical barriers to deter the spread of the oil or to protect endangered species; control of the water discharged from upstream impoundment; and the use of chemicals and other materials in accordance with Subpart H, to restrain the spread of the oil and mitigate its effects.

(b) Appropriate actions should be taken to recover the oil or mitigate its effects. Of the numerous chemical physical methods that may be used, the chosen methods should be the most consistent with protecting the public health and welfare and the environment. Sinking agents shall not be used.

(c) Oil and contaminated materials recovered in clean-up operations shall be disposed of in accordance with Federal regional and Federal local contingency plans.

§ 300.54 Phase IV—Documentation and cost recovery.

(a) Documentation shall be collected and maintained to support all actions taken under the CWA and to form the basis for cost recovery. In general, documentation should be sufficient to prove the source and circumstances of the incident, the responsible party or parties, and impact and potential impacts to the public health and welfare and the environment. When appropriate, documentation should also be collected for scientific understanding of the environment and for the research and development of improved response methods and technology. Damages to private citizens (including loss of earnings) are not addressed by this Plan. Evidentiary and cost documentation procedures and requirements are specified in the USCG Marine Safety Manual (Commandant Instruction M16000.3) and 33 CFR Part 153.

(b) The OSC shall ensure the necessary collection and safeguarding of information, samples, and reports. Samples and information must be gathered expeditiously during the response to ensure an accurate record of the impacts incurred. Documentation materials shall be made available to the trustees of affected natural resources where practicable.

(c) Information and reports obtained by the EPA or USCG OSC shall be transmitted to the appropriate offices responsible for follow-up actions.

§ 300.55 General pattern of response.

(a) When the OSC receives a report of a discharge, actions normally should be taken in the following sequence:

(1) Immediately notify the RRT and NRC when the reported discharge is an actual or potential major discharge.

(2) Investigate the report to determine pertinent information such as the threat posed to public health or welfare, or the environment, the type and quantity of polluting material, and the source of the discharge.

(3) Officially classify the size of the discharge and determine the course of action to be followed.

(4) Determine whether a discharger or other person is properly carrying

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out removal. Removal is being done properly when:

(i) The clean-up is fully sufficient to minimize or mitigate damage to the public welfare (removal efforts are "improper" to the extent that Federal efforts are necessary to prevent further damage).

(ii) The removal efforts are in accordance with applicable regulations and guidelines, including this Plan.

(5) Determine whether a State or political subdivision has the capability to carry out response actions and a contract or cooperative agreement has been established with the appropriate fund administrator for this purpose.

(6) Notify the RRT (including the affected State), SSC, and the trustees of affected natural resources in accordance with the applicable regional plan.

(b) The preliminary inquiry will probably show that the situation falls into one of five classes. These classes and the appropriate response to each are outlined below:

(1) If the investigation shows that no discharge exists, the case shall be considered a false alarm and should be closed.

(2) If the investigation shows a minor discharge with the responsible party taking proper removal action, contact should be established with the party. The removal action should be monitored to ensure continued proper action.

(3) If the investigation shows a minor discharge with improper removal action being taken, the following measures shall be taken:

(i) An immediate effort should be made to stop further pollution.

(ii) The responsible party shall be advised of what action will be so considered appropriate.

(iii) If the responsible party does not properly respond, he shall be notified of his potential liability for Federal response performed under the CWA. This liability includes all costs of removal and may include the costs of assessing and restoring damaged natural resources and other actual or necessary costs of a Federal response.

(iv) The OSC shall notify appropriate State and local officials, keep the

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RRT advised and initiate Phase III operations as conditions warrant.

(v) Information shall be collected for possible recovery of response costs in accordance with § 300.54.

(4) When the investigation shows that an actual or potential medium oil discharge exists, the OSC shall follow the same general procedures as for a minor discharge. If appropriate, the OSC shall recommend activation of the RRT.

(5) When the investigation shows an actual or potential major oil discharge, the OSC shall follow the same procedures as for minor and medium discharges.

§ 300.56 Pollution reports.

(a) Within 60 days after the conclusion of a major discharge or when requested by the RRT, the EPA or USCG OSC shall submit to the RRT a complete report on the response operation and the actions taken. The OSC shall at the same time send a copy of the report to the NRT. The RRT shall review the OSC's report and prepare an endorsement to the NRT for review. This shall be accomplished within 30 days after the report has been received.

(b) The OSC's report shall accurately record the situation as it developed, the actions taken, the resources committed and the problems encountered. The OSC's recommendations are a source for new procedures and policy.

(c) The format for the OSC's report shall be as follows:

(1) Summary of Events—A chronological narrative of all events, including:

(i) The cause of the discharge;

(ii) The initial situation;

(iii) Efforts to obtain response by responsible parties;

(iv) The organization of the response;

(v) The resources committed;

(vi) The location (water body, State, city, latitude and longitude) of the oil discharge and an indication of whether the discharge was in connection with activities regulated under the Outer Continental Shelf Lands Act (OCSLA), the Trans-Alaska Pipeline Authority Act or Deepwater Port Act;

or whether it might have or actually did affect natural resources managed or protected by the U.S.;

(vii) Comments on Federal or State efforts to replace or restore damaged natural resources and damage assessment activities; and

(viii) Details of any threat abatement actions taken under section 311 (c) or (d) of the CWA.

(2) Effectiveness of Removal Actions—A candid and thorough analysis of the effectiveness of removal actions taken by:

(i) The responsible party;

(ii) State and local forces;

(iii) Federal agencies and special forces; and

(iv) (If applicable) contractors, private groups and volunteers.

(3) Problems Encountered—A list of problems affecting response with particular attention to problems of inter-governmental coordination.

(4) Recommendations—OSC recommendations, including at a minimum:

(i) Means to prevent a recurrence of the discharge;

(ii) Improvement of response actions;

(iii) Any recommended changes in the National Contingency Plan or Federal regional plan.

§ 300.57 Special considerations.

(a) *Safety of Personnel.* The OSC should be aware of threats to human health and safety and shall ensure that persons entering the response area use proper precautions, procedures, and equipment and that they possess proper training. Federal local plans shall identify sources of information on anticipated hazards, precautions, and requirements to protect personnel during response operations. Names and phone numbers of people with relevant information shall be included. Responsibility for the safety of all Federal employees rests with the heads of their agencies. Accordingly, each Federal employee on the scene must be apprised of and conform with OSHA regulations and other deemed necessary by the OSC. All private contractors who are working on-site must conform to applicable provisions of the Occupational Safety and Health

Act and standards deemed necessary by the OSC.

(b) *Waterfowl Conservation.* The DOI representative and the State liaison to the RRT shall arrange for the coordination of professional and volunteer groups permitted and trained to participate in waterfowl dispersal, collection, cleaning, rehabilitation and recovery activities (consistent with 16 U.S.C. 703-712 and applicable State laws). Federal regional and Federal local plans will, to the extent practicable, identify organizations or institutions that are permitted to participate in such activities and operate such facilities. Waterfowl conservation activities will normally be included in Phase III response actions (§ 300.53 of this subpart).

§ 300.58 Funding.

(a) If the person responsible for the discharge does not act promptly or take proper removal actions, or if the person responsible for the discharge is unknown, Federal discharge removal actions may begin under section 311(c)(1) of the CWA. The discharger, if known, is liable for the costs of Federal removal in accordance with section 311(f) of the CWA and other Federal laws.

(b) Actions undertaken by the participating agencies in response to pollution shall be carried out under existing programs and authorities when available. This Plan intends that Federal agencies will make resources available, expend funds, or participate in response to oil discharges under their existing authority. Authority to expend resources will be in accordance with agencies' basic statutes and, if required, through interagency agreements. Specific interagency reimbursement agreements may be signed when necessary to ensure that the Federal resources will be available for a timely response to a discharge of oil. The ultimate decision as to the appropriateness of expending funds rests with the agency that is held accountable for such expenditures.

(c) The OSC shall exercise sufficient control over removal operations to be able to certify that reimbursement

from the following funds is appropriate:

(1) The oil pollution fund, administered by the Commandant, USCG, has been established pursuant to section 311(k) of the CWA. Regulations governing the administration and use of the fund are contained in 33 CFR Part 153.

(2) The fund authorized by the Deepwater Port Act is administered by the Commandant, USCG. Governing regulations are contained in 33 CFR Parts 138 and 150.

(3) The fund authorized by the Outer Continental Shelf Lands Act, as amended, is administered by the Commandant, USCG. Governing regulations are contained in 33 CFR Parts 138 and 150.

(4) The fund authorized by the Trans-Alaska Pipeline Authorization Act is administered by a Board of Trustees under the purview of the Secretary of the Interior. Governing regulations are contained in 43 CFR Part 29.

(d) Response actions other than removal, such as scientific investigations not in support of removal actions or law enforcement, shall be provided by the agency with legal responsibility for those specific actions.

(e) The funding of a response to a discharge from a Federally operated or supervised facility or vessel is the responsibility of the operating or supervising agency.

(f) The following agencies have funds available for certain discharge removal actions:

(1) EPA may provide funds to begin timely discharge removal actions when the OSC is an EPA representative.

(2) The USCG pollution control efforts are funded under "operating expenses." These funds are used in accordance with agency directives.

(3) The Department of Defense has two specific sources of funds which may be applicable to an oil discharge under appropriate circumstances. (This does not consider military resources which might be made available under specific conditions.)

(i) Funds required for removal of a sunken vessel or similar obstruction of navigation are available to the Corps of Engineers through Civil Works Ap-

propriations, Operations and Maintenance, General.

(ii) The U.S. Navy may conduct salvage operations contingent on defense operational commitments, when funded by the requesting agency. Such funding may be requested on a direct cite basis.

(4) Pursuant to section 311(c)(2)(H) of the CWA, the State or States affected by a discharge of oil, may act where necessary to remove such discharge and may, pursuant to 33 CFR Part 153, be reimbursed from the pollution revolving fund for the reasonable costs incurred in such a removal.

(i) Removal by a State is necessary within the meaning of section 311(c)(2)(H) of the CWA when the OSC determines that the owner or operator of the vessel, onshore facility, or offshore facility from which the discharge occurs does not effect removal properly, or is unknown, and that:

(A) State action is required to minimize or mitigate significant damage to the public health or welfare which Federal action cannot minimize or mitigate, or

(B) Removal or partial removal can be done by the State at a cost which is less than or not significantly greater than the cost which would be incurred by the Federal departments or agencies.

(ii) State removal actions must be in compliance with this Plan in order to qualify for reimbursement.

(iii) State removal actions are considered to be Phase III actions, under the same definitions applicable to Federal agencies.

(iv) Actions taken by local governments in support of Federal discharge removal operations are considered to be actions of the State for purposes of this section. Federal regional and Federal local plans shall show what funds and resources are available from participating agencies under various conditions and cost arrangements. Inter-agency agreements may be necessary to specify when reimbursement is required.

Subpart F—Hazardous Substance Response

§ 300.61 General.

(a) This subpart establishes methods and criteria for determining the appropriate extent of response authorized by CERCLA when any hazardous substance is released or there is a substantial threat of such a release into the environment, or there is a release or substantial threat of a release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare.

(b) Section 104(a)(1) of CERCLA authorizes removal or remedial action unless it is determined that such removal or remedial action will be done properly by the owner or operator of the vessel or facility from which the release or threat of release emanates, or by any other responsible party.

(c) In determining the need for and in planning or undertaking Fund-financed action, response personnel should, to the extent practicable, consider the following:

(1) Encourage State participation in response actions (see § 300.63).

(2) Conserve Fund monies by encouraging private party clean-up.

(3) Be sensitive to local community concerns (in accordance with applicable guidance).

(4) Rely on established technology when feasible and cost-effective.

(5) Encourage the participation and sharing of technology by industry and other experts.

§ 300.62 State role.

(a) States are encouraged to undertake actions authorized under this subpart. Section 104(d)(1) of CERCLA authorizes EPA to enter into contracts or cooperative agreements with the State to take response actions authorized under CERCLA, when EPA determines that the State has the capability to undertake such actions.

(b) EPA will provide assistance from the Fund to States pursuant to a contract or cooperative agreement. The agreement can authorize States to undertake most actions specified in this Subpart.

(c)(1) Pursuant to section 104(c)(3) of CERCLA, before any Fund-financed remedial action may be taken, the affected State(s) must enter into a contract or cooperative agreement with the Federal government.

(2) Included in such contract or cooperative agreement must be assurances by the State consistent with requirements of section 104(c)(3) of CERCLA.

(d) Prior to remedial design activity, the State must make a firm commitment, through either a cooperative agreement or a new or amended State contract, to provide funding for remedial implementation by:

(1) Authorizing the reduction of a State credit to cover its share of costs;

(2) Identifying currently available funds earmarked for remedial implementation; or

(3) Submitting a plan with milestones for obtaining necessary funds.

(e) State credits allowed under section 104(c)(3) of CERCLA must be documented on a site-specific basis for State out-of-pocket, non-Federal eligible response costs between January 1, 1978, and December 11, 1980. Prior to remedial investigation activity at a site, the State must submit its estimate of these costs as a part of the pre-application package when a cooperative agreement is used, or as a part of the State contract. State credits will be applied against State cost shares for Federally-funded remedial actions. A State cannot be reimbursed from the Fund for credit in excess of its matching share.

(f) Pursuant to section 104(c)(2) of CERCLA, prior to determining any appropriate remedial action, EPA shall consult with the affected State or States.

§ 300.63 Phase I—Discovery and notification.

(a) A release may be discovered through:

(1) Notification in accordance with sections 103(a) or (c) of CERCLA;

(2) Investigation by government authorities conducted in accordance with section 104(e) of CERCLA or other statutory authority;

(3) Notification of a release by a Federal or State permit holder when required by its permit;

(4) Inventory efforts or random or incidental observation by government agencies or the public;

(5) Other sources.

(b) If not reported previously, a release should be promptly reported to the NRC. Section 103(a) of CERCLA requires any person in charge of a vessel or facility to immediately notify the NRC as soon as he has knowledge of a release (other than a federally permitted release) of a hazardous substance from such vessel or facility in an amount equal to or greater than the reportable quantity determined pursuant to section 102(b) of CERCLA. The NRC shall convey the notification expeditiously to appropriate government agencies, and in the case of notices received pursuant to section 103(a), the NRC shall also notify the Governor of any affected State.

(c) Upon receipt of a notification of a release, the NRC shall promptly notify the appropriate OSC.

§ 300.64 Phase II—Preliminary assessment.

(a) A preliminary assessment of a release identified for possible CERCLA response should be undertaken by the lead agency. If the reported release potentially requires immediate removal, the preliminary assessment should be done as promptly as possible. Other releases shall be assessed as soon as practicable. The lead agency should base its assessment on readily available information. This assessment may include:

(1) Evaluation of the magnitude of the hazard;

(2) Identification of the source and nature of the release;

(3) Determination of the existence of a non-Federal party or parties ready, willing, and able to undertake a proper response; and

(4) Evaluation of factors necessary to make the determination of whether immediate removal is necessary.

(b) A preliminary assessment of releases from hazardous waste management facilities may include collection or review of data such as site manage-

ment practices, information from generators, photographs, analysis of historical photographs, literature searches, and personal interviews conducted as appropriate. In addition, a perimeter (off-site) inspection may be necessary to determine the potential for a release. Finally, if more information is needed, a site visit may be performed, if conditions are such that it may be performed safely.

(c) A preliminary assessment should be terminated when the OSC determines:

(1) There is no release;

(2) The source is neither a vessel nor a facility;

(3) The release involves neither a hazardous substance, nor a pollutant or contaminant that may pose an imminent and substantial danger to public health or welfare;

(4) The amount released does not warrant Federal response;

(5) A party responsible for the release, or any other person, is providing appropriate response, and on-scene monitoring by the government is not recommended or approved by the lead agency; or

(6) The assessment is completed.

§ 300.65 Phase III—Immediate removal.

(a) In determining the appropriate extent of action to be taken at a given release, the lead agency shall first review the preliminary assessment to determine if immediate removal action is appropriate. Immediate removal action shall be deemed appropriate in those cases in which the lead agency determines that the initiation of immediate removal action will prevent or mitigate immediate and significant risk of harm to human life or health or to the environment from such situations as:

(1) Human, animal, or food chain exposure to acutely toxic substances;

(2) Contamination of a drinking water supply;

(3) Fire and/or explosion; or

(4) Similarly acute situations.

(b) If the lead agency determines that immediate removal is appropriate, defensive actions should begin as soon as possible to prevent or mitigate danger to the public health, welfare,

or the environment. Actions may include, but are not limited to:

(1) Collecting and analyzing samples to determine the source and dispersion of the hazardous substance and documenting those samples for possible evidentiary use.

(2) Providing alternative water supplies.

(3) Installing security fencing or other measures to limit access.

(4) Controlling the source of release.

(5) Measuring and sampling.

(6) Moving hazardous substances off-site for storage, destruction, treatment, or disposal provided that the substances are moved to a facility that is in compliance with subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

(7) Placing physical barriers to deter the spread of the release.

(8) Controlling the water discharge from an upstream impoundment.

(9) Recommending to appropriate authorities the evacuation of threatened individuals.

(10) Using chemicals and other materials in accordance with Subpart H to restrain the spread of the substance and to mitigate its effects.

(11) Executing damage control or salvage operations.

(c) Immediate removal actions are complete when, in the opinion of the lead agency, the criteria in paragraph (a) of § 300.65 are no longer met and any contaminated waste materials transported off-site have been treated or disposed of properly.

(d) Immediate removal action shall be terminated after \$1 million has been obligated for the action or six months have elapsed from the date of initial response to a release or threatened release unless it is determined that:

(1) Continued response actions are immediately required to prevent, limit or mitigate an emergency;

(2) There is an immediate risk to public health or welfare or the environment; and

(3) Such assistance will not otherwise be provided on a timely basis.

(e) If the lead agency determines that the release still may require planned removal or remedial action,

the lead agency or a State may initiate, either simultaneously or sequentially, Phase IV or V as appropriate.

§ 300.66 Phase IV—Evaluation and determination of appropriate response—planned removal and remedial action.

(a) The purpose of this phase is to determine the appropriate action when the preliminary assessment indicates that further response may be necessary or when the OSC requests and the lead agency concurs that further response should follow an immediate removal action.

(b) As soon as practicable, an inspection will be undertaken to assess the nature and extent of the release and to assist in determining its priority for Fund-financed response.

(c)(1) Pursuant to section 104 (b) and (e) of CERCLA, the responsible official may undertake investigations, monitoring, surveys, testing and other information gathering as appropriate. These efforts shall be undertaken jointly by the Federal or State officials responsible for providing Fund-financed response and those responsible for enforcing legal requirements.

(2) A major objective of an inspection is to determine if there is any immediate danger to persons living or working near the facility. In general, the collection of samples should be minimized during inspection activities; however, situations in which there is an apparent risk to the public should be treated as exceptions to that practice. Examples of apparent risk include use of nearby wells for drinking water, citizen complaints of unusual taste or odor in drinking water, or chemical odors or unusual health problems in the vicinity of the release. Under those circumstances, a sampling protocol should be developed for the inspection to allow for the earliest possible detection of any human exposure to hazardous substances. The site inspection may also address:

(i) Determining the need for immediate removal action;

(ii) Assessing amounts, types and location of hazardous substances stored;

(iii) Assessing potential for substances to migrate from areas where they were originally located;

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(iv) Determining or documenting immediate threats to the public or environment.

(d) *Methods for Establishing Priorities.* (1) States that wish to submit candidates for the National Priorities List must use the Hazard Ranking System (included in Appendix A) to rank the releases.

(2) EPA will notify States at least thirty days prior to the deadline for submitting candidate releases for the National Priorities List or any subsequent revisions.

(3) Each State may designate a facility as the State's highest priority release by certifying, in writing signed by the Governor or the Governor's designee, that the facility presents the greatest danger to public health, welfare or the environment among known facilities in the State.

(e) *National Priorities List.* (1) Compiling the National Priorities List—EPA Regional Office will review State hazard rankings to ensure uniform application of the Hazard Ranking System and may add, in consultation with the States, any additional priority releases known to EPA. The States' priorities will be reviewed and consolidated by EPA Headquarters into a National Priorities List pursuant to section 105(8) of CERCLA. To the extent practicable, each State's designated top priority facility will be included among the one hundred highest priority facilities.

(2) No facilities presently owned by the Federal Government will be included on the National Priorities List.

(3) EPA will submit the recommended National Priorities List to the NRT for review and comment.

(4) EPA will publish a proposed National Priorities List for public comment.

(5) The National Priorities List is presented in Appendix B.

(6) *Ranking of Releases*—Similar hazard ranking scores assigned to releases cannot accurately differentiate among risks represented by the releases. Thus, in order to avoid misleading the public that real differences in risk exist, similar scores may be grouped on the National Priorities List.

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(7) EPA will revise and publish the National Priorities List at least once annually. In addition, revisions will give notice of the deletion (if any) of releases previously listed.

§ 300.67 Phase V—Planned removal.

(a) Planned removal may be undertaken pursuant to a contract or cooperative agreement when the lead agency determines that:

(1) There would be a substantial cost savings by continuing a response action with the equipment and resources mobilized for an immediate removal action taken pursuant to § 300.64, but terminate pursuant to § 300.64(c); or

(2) The public and/or environment will be at risk from exposure to hazardous substances if response is delayed at a release not on the National Priorities List.

(b) Planned removal must be requested by the Governor of the affected State or his designee. Requests must include:

(1) A description of the nature and extent of the release;

(2) A description of actions taken or underway at the site;

(3) A description of the proposed planned removal; and

(4) Assurances that the State will pay at least 10 percent of the costs of the action, including all future maintenance, or at least 50 percent or such greater amount as EPA may determine appropriate, taking into account the degree of responsibility of the State or political subdivision, of any sums expended in response to a release at a facility that was owned at the time of any disposal of hazardous substances therein by the State or a political subdivision thereof.

(c) Among the factors that EPA will use to determine whether a planned removal is appropriate under § 300.67(a)(2) are the following:

(1) Actual or potential direct contact with hazardous substances by nearby population;

(2) Contaminated drinking water at the tap;

(3) Hazardous substances in drums, barrels, tanks, or other bulk storage containers, that are known to pose a

serious threat to public health or the environment;

(4) Highly contaminated soils largely at or near surface, posing a serious threat to public health or the environment;

(5) Serious threat of fire or explosion; or

(6) Weather conditions that may cause substances to migrate and pose a serious threat to public health or the environment.

(d) Planned removal actions shall be terminated when the lead agency determines that the risk to the public health or the environment has been abated. In making this determination, the lead agency shall consider whether the factors listed in § 300.68(c) continue to apply to the release and whether any contaminated waste materials transported off-site have been treated or disposed of properly.

(e) Unless the EPA finds that (1) continued response actions are immediately required to prevent, limit or mitigate an emergency, (2) there is an immediate risk to public health or welfare or the environment, and (3) such assistance will not otherwise be provided on a timely basis, obligations from the Fund, other than those authorized by section 104(b) of CERCLA, shall not continue after \$1 million has been obligated for response actions or six months has elapsed from the date of initial response to the release.

§ 300.68 Phase VI—Remedial action.

(a) Remedial actions taken pursuant to this section (other than responses at Federal facilities) are those responses to releases on the National Priorities List that are consistent with permanent remedy to prevent or mitigate the migration of a release of hazardous substances into the environment.

(b) States are encouraged to undertake Fund-financed remedial actions in accordance with § 300.62 of this Plan.

(c) As an alternative or in addition to Fund-financed remedial action, the lead agency may seek, through voluntary agreement or administrative or judicial process, to have those persons responsible for the release clean up in a manner that effectively mitigates

and minimizes damage to, and provides adequate protection of, public health, welfare, and the environment. The lead agency shall evaluate the adequacy of clean-up proposals submitted by responsible parties or determine the level of clean-up to be sought through enforcement efforts, by consideration of the factors discussed in paragraphs (e) through (j) of this section. The lead agency will not, however, apply the cost balancing considerations discussed in paragraph (k) of this section to determine the appropriate extent of responsible party clean-up.

(d)(1) The lead agency, in cooperation with State(s), will examine available information and determine, based on the factors in paragraph (g) of this section, the type or types of remedial response that may be needed to remedy the release. This scoping will serve as the basis for requesting funding for a remedial investigation and feasibility study:

(i) In the case of initial remedial measures, a single request may be made by a State for funding the remedial investigation, feasibility study, design and implementation, in order that such measures may be expedited while continuing the remainder of the remedial planning process.

(ii) In the case of source control or off-site remedial action, the initial funding request should be for the remedial investigation and feasibility study. Requests for funding of design and implementation should be made after the completion of the feasibility study.

(2) As a remedial investigation progresses, the project may be modified if the lead agency determines that, based on the factors in § 300.68(e), such modifications would be appropriate.

(e) In determining the appropriate extent of remedial action, the following factors should be used to determine the type or types of remedial action that may be appropriate:

(1) In some instances, initial remedial measures can and should begin before final selection of an appropriate remedial action if such measures are determined to be feasible and necessary to limit exposure or threat of

exposure to a significant health or environmental hazard and if such measures are cost-effective. Compliance with § 300.67(b) is a prerequisite to taking initial remedial measures. The following factors should be used in determining whether initial remedial measures are appropriate:

(i) Actual or potential direct contact with hazardous substances by nearby population. (Measures might include fences and other security precautions.)

(ii) Absence of an effective drainage control system (with an emphasis on run-on control). (Measures might include drainage ditches.)

(iii) Contaminated drinking water at the tap. (Measures might include the temporary provision of an alternative water supply.)

(iv) Hazardous substances in drums, barrels, tanks, or other bulk storage containers, above surface posing a serious threat to public health or the environment. (Measures might include transport of drums off-site.)

(v) Highly contaminated soils largely at or near surface, posing a serious threat to public health or the environment. (Measures might include temporary capping or removal of highly contaminated soils from drainage areas.)

(vi) Serious threat of fire or explosion or other serious threat to public health or the environment. (Measures might include security or drum removal.)

(vii) Weather conditions that may cause substances to migrate and to pose a serious threat to public health or the environment. (Measures might include stabilization of berms, dikes or impoundments.)

(2) Source control remedial actions may be appropriate if a substantial concentration of hazardous substances remain at or near the area where they were originally located and inadequate barriers exist to retard migration of substances into the environment. Source control remedial actions may not be appropriate if most substances have migrated from the area where originally located or if the lead agency determines that the substances are adequately contained. Source control remedial actions may include alternatives to contain the hazardous substances where they are located or

eliminate potential contamination by transporting the hazardous substances to a new location. The following criteria should be assessed in determining whether and what type of source control remedial actions should be considered:

(1) The extent to which substances pose a danger to public health, welfare, or the environment. Factors which should be considered in assessing this danger include:

(A) Population at risk;

(B) Amount and form of the substance present;

(C) Hazardous properties of the substances;

(D) Hydrogeological factors (e.g. soil permeability depth to saturated zone, hydrologic gradients, proximity to a drinking water aquifer); and

(E) Climate (rainfall, etc.).

(ii) The extent to which substances have migrated or are contained by either natural or man-made barriers.

(iii) The experiences and approaches used in similar situations by State and Federal agencies and private parties.

(iv) Environmental effects and welfare concerns.

(3) In some situations it may be appropriate to take action (referred to as offsite remedial actions) to minimize and mitigate the migration of hazardous substances and the effects of such migration. These actions may be taken when the lead agency determines that source control remedial actions may not effectively mitigate and minimize the threat and there is a significant threat to public health, welfare, or the environment. These situations typically will result from contamination that has migrated beyond the area where the hazardous substances were originally located. Offsite measures may include provision of permanent alternative water supplies, management of a drinking water aquifer plume or treatment of drinking water aquifers. The following criteria should be used in determining whether and what type of offsite remedial actions should be considered:

(i) Contribution of the contamination to an air, land or water pollution problem.

(ii) The extent to which the substances have migrated or are expected

to migrate from the area of their original location and whether continued migration may pose a danger to public health, welfare or environment.

(iii) The extent to which natural or man-made barriers currently contain the hazardous substances and the adequacy of the barriers.

(iv) The factors listed in paragraph (e)(2)(i) of this section.

(v) The experiences and approaches used in similar situations by State and Federal agencies and private parties.

(iv) Environmental effects and welfare concerns.

(f) A remedial investigation should be undertaken by the lead agency (or responsible party if the responsible party will be developing a clean-up proposal) to determine the nature and extent of the problem presented by the release. This includes sampling and monitoring, as necessary, and includes the gathering of sufficient information to determine the necessity for and proposed extent of remedial action. During the remedial investigation, the original scoping of the project may be modified based on the factors in § 300.68(e). Part of the remedial investigation involves assessing whether the threat can be mitigated and minimized by controlling the source of the contamination at or near the area where the hazardous substances were originally located (source control remedial actions) or whether additional actions will be necessary because the hazardous substances have migrated from the area of their original location (offsite remedial actions).

(g) *Development of Alternatives.* A limited number of alternatives should be developed for either source control or offsite remedial actions (or both) depending upon the type of response that has been identified under paragraphs (e) and (f) of this section as being appropriate. One alternative may be a no-action alternative. No-action alternatives are appropriate, for example, when response action may cause a greater environmental or health danger than no action. These alternatives should be developed based upon the assessment conducted under paragraphs (e) and (f) of this section and reflect the types of source control or offsite remedial actions determined

to be appropriate under paragraphs (e) and (f) of this section.

(h) *Initial Screening of Alternatives.* The alternatives developed under paragraph (g) of this section will be subjected to an initial screening to narrow the list of potential remedial actions for further detailed analysis. Three broad criteria should be used in the initial screening of alternatives:

(1) *Cost.* For each alternative, the cost of installing or implementing the remedial action must be considered, including operation and maintenance costs. An alternative that far exceeds (e.g. by an order of magnitude) the costs of other alternatives evaluated and that does not provide substantially greater public health or environmental benefit should usually be excluded from further consideration.

(2) *Effects of the Alternative.* The effects of each alternative should be evaluated in two ways: (i) Whether the alternative itself or its implementation has any adverse environmental effects; and (ii) for source control remedial actions, whether the alternative is likely to achieve adequate control of source material, or for offsite remedial actions, whether the alternative is likely to effectively mitigate and minimize the threat of harm to public health, welfare or the environment. If an alternative has significant adverse effects, it should be excluded from further consideration. Only those alternatives that effectively contribute to protection of public health, welfare, or the environment should be considered further.

(3) *Acceptable Engineering Practices.* Alternatives must be feasible for the location and conditions of the release, applicable to the problem, and represent a reliable means of addressing the problem.

(i) *Detailed Analysis of Alternatives.*

(1) A more detailed evaluation will be conducted of the limited number of alternatives that remain after the initial screening in paragraph (h).

(2) The detailed analysis of each alternative should include:

(A) Refinement and specification of alternatives in detail, with emphasis on use of established technology;

(B) Detailed cost estimation, including distribution of costs over time;

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(C) Evaluation in terms of engineering implementation, or constructability;

(D) An assessment of each alternative in terms of the extent to which it is expected to effectively mitigate and minimize damage to, and provide adequate protection of, public health, welfare, and the environment, relative to the other alternatives analyzed; and

(E) An analysis of any adverse environmental impacts, methods for mitigating these impacts, and costs of mitigation.

(3) In performing the detailed analysis of alternatives, it may be necessary to gather additional data in order to complete the analysis.

(j) The appropriate extent of remedy shall be determined by the lead agency's selection of the remedial alternative which the agency determines is cost-effective (i.e. the lowest cost alternative that is technologically feasible and reliable and which effectively mitigates and minimizes damage to and provides adequate protection of public health, welfare, or the environment).

(k) Section 104(c)(4) of CERCLA requires that the need for protection of public health, welfare and the environment at the facility under consideration be balanced against the amount of money available in the Fund to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the need for immediate action. Accordingly, in determining the appropriate extent of remedy for Fund-financed response, the lead agency also must consider the need to respond to other releases with Fund monies.

§ 300.69 Phase VII—Documentation and cost recovery.

(a) During all phases, documentation shall be collected and maintained to support all actions taken under this Plan, and to form the basis for cost recovery. In general, documentation should be sufficient to provide the source and circumstances of the condition, the identity of responsible parties, accurate accounting of Federal costs incurred, and impacts and poten-

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tial impacts to the public health, welfare and environment.

(b) The information and reports obtained by the lead agency for Fund-financed response action should be transmitted to the RRC. Copies can then be forwarded to the NRT, members of the RRT, and others as appropriate.

§ 300.70 Methods of remedying releases.

(a) The following section lists methods for remedying releases that may be considered by the lead agency in taking response action. This list of methods should not be considered inclusive of all possible methods of remedying releases.

(b) *Engineering Methods for On-Site Actions*—(1)(i) *Air emissions control.* The control of volatile gaseous compounds should address both lateral movement and atmospheric emissions. Before gas migration controls can be properly installed, field measurements to determine gas concentrations, pressures, and soil permeabilities should be used to establish optimum design for control. In addition, the types of hazardous substances present, the depth to which they extend, the nature of the gas and the subsurface geology of the release area should, if possible, be determined. Typical emission control techniques include the following:

- (A) Pipe vents;
- (B) Trench vents;
- (C) Gas barriers;
- (D) Gas collection systems;
- (E) Overpacking.

(ii) *Surface water controls.* These are remedial techniques designed to reduce waste infiltration and to control runoff at release areas. They also serve to reduce erosion and to stabilize the surface of covered sites. These types of control technologies are usually implemented in conjunction with other types of controls such as the elimination of ground water infiltration and/or waste stabilization, etc. Technologies applicable to surface water control include the following:

- (A) Surface seals;
- (B) Surface water diversion and collection systems;
- (1) Dikes and berms;

- (2) Ditches, diversions, waterways;
 - (3) Chutes and downpipes;
 - (4) Levees;
 - (5) Seepage basins and ditches;
 - (6) Sedimentation basins and ponds;
 - (7) Terraces and benches.
- (C) Grading;
- (D) Revegetation.

(iii) *Ground water controls.* Ground water pollution is a particularly serious problem because, once an aquifer has been contaminated, the resource cannot usually be cleaned without the expenditure of great time, effort and resources. Techniques that can be applied to the problem with varying degrees of success are as follows:

- (A) Impermeable barriers:
- (1) Slurry walls;
 - (2) Grout curtains;
 - (3) Sheet pilings.
- (B) Permeable treatment beds;
- (C) Ground water pumping:
- (1) Water table adjustment;
 - (2) Plume containment.

(D) *Leachate control*—Leachate control systems are applicable to control of surface seeps and seepage of leachate to ground water. Leachate collection systems consist of a series of drains which intercept the leachate and channel it to a sump, wetwell, treatment system, or appropriate surface discharge point. Technologies applicable to leachate control include the following:

- (1) Subsurface drains;
- (2) Drainage ditches;
- (3) Liners.

(iv) *Contaminated water and sewer lines.* Sanitary sewers and municipal water mains located down gradient from hazardous waste disposal sites may become contaminated by infiltration of leachate or polluted ground water through cracks, ruptures, or poorly sealed joints in piping. Technologies applicable to the control of such contamination to water and sewer lines include:

- (A) Grouting;
- (B) Pipe relining and sleeving;
- (C) Sewer relocation.

(2) *Treatment technologies*—(1) *Gaseous emissions treatment.* Gases from waste disposal sites frequently contain malodorous and toxic substances, and thus require treatment before release

to the atmosphere. There are two basic types of gas treatment systems:

- (A) Vapor phase adsorption;
- (B) Thermal oxidation.

(ii) *Direct waste treatment methods.*

In most cases, these techniques can be considered long-term permanent solutions. Many of these direct treatment methods are not fully developed and the applications and process reliability are not well demonstrated. Use of these techniques for waste treatment may require considerable pilot plant work. Technologies applicable to the direct treatment of wastes are:

(A) Biological methods:

- (1) Treatment via modified conventional wastewater treatment techniques;
- (2) Anaerobic, aerated and facultative lagoons;
- (3) Supported growth biological reactors.

(B) Chemical methods:

- (1) Chlorination;
- (2) Precipitation, flocculation, sedimentation;
- (3) Neutralization;
- (4) Equalization;
- (5) Chemical oxidation.

(C) Physical methods:

- (1) Air stripping;
- (2) Carbon absorption;
- (3) Ion exchange;
- (4) Reverse osmosis;
- (5) Permeable bed treatment;
- (6) Wet air oxidation;
- (7) Incineration.

(iii) *Contaminated soils and sediments.* In some cases where it can be shown to be cost-effective, contaminated sediments and soils will be treated on the site. Technologies available include:

- (A) Incineration;
- (B) Wet air oxidation;
- (C) Solidification;
- (D) Encapsulation;
- (E) In situ treatment:

(1) Solution mining, (soil washing or soil flushing);

- (2) Neutralization/detoxification;
- (3) Microbiological degradation.

(c) *Offsite Transport for Storage, Treatment, Destruction or Secure Disposition*—(1) *General.* Offsite transport or storage, treatment, destruction, or secure disposition offsite may

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be provided in cases where EPA determines that such actions:

(i) Are more cost-effective than other forms of remedial actions;

(ii) Will create new capacity to manage, in compliance with Subtitle C of the Solid Waste Disposal Act, hazardous substances in addition to those located at the affected facility; or

(iii) Are necessary to protect public health, welfare, or the environment from a present or potential risk which may be created by further exposure to the continued presence of such substances or materials.

(2) *Contaminated soils and sediments may be removed from the site.* Technologies used to remove contaminated sediments on soils include:

(i) Excavation;

(ii) Hydraulic dredging;

(iii) Mechanical dredging.

(d) *Provision of Alternative Water Supplies.* Alternative water supplies can be provided in several ways:

(1) Provision of individual treatment units;

(2) Provision of water distribution system;

(3) Provision of new wells in a new location or deeper wells;

(4) Provision of cisterns;

(5) Provision of bottled or treated water;

(6) Provision of upgraded treatment for existing distribution systems.

(e) *Relocation.* Permanent relocation of residents, businesses, and community facilities may be provided where it is determined that human health is in danger and that, alone or in combination with other measures, relocation would be cost-effective and environmentally preferable to other remedial response. Temporary relocation may also be taken in appropriate circumstances.

§ 300.71 Worker health and safety.

Lead agency personnel should be aware of hazards, due to a release of hazardous substances, to human health and safety and exercise great caution in allowing civilian or government personnel into an affected area until the nature of the release has been ascertained. Accordingly, the OSC or responsible official must conform to applicable OSHA require-

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ments and other guidance. All private contractors who are working at the scene of a release must conform to applicable provisions of the Occupational Safety and Health Act and any other requirements deemed necessary by the lead agency.

Subpart G—Trustees for Natural Resources

§ 300.72 Designation of Federal trustees.

When natural resources are lost or damaged as a result of a discharge of oil or release of a hazardous substance, the following officials are designated to act as Federal trustees pursuant to section 111(h)(1) of CERCLA for purposes of sections 111(h)(1), 111(b) and 107(f) of CERCLA:

(a)(1) *Natural Resource Loss.* Damage to resources of any kind located on, over or under land subject to the management or protection of a Federal land managing agency, other than land or resources in or under United States waters that are navigable by deep draft vessels, including waters of the contiguous zone and parts of the high seas to which the National Contingency Plan is applicable and other waters subject to tidal influence.

(2) *Trustee.* The head of the Federal land managing agency, or the head of any other single entity designated by it to act as trustee for a specific resource.

(b)(1) *Natural Resource Loss.* Damage to fixed or non-fixed resources subject to the management or protection of a Federal agency, other than land in resources in or under United States waters that are navigable by deep draft vessels, including waters of the contiguous zone and parts of the high seas to which the National Contingency Plan is applicable and other waters subject to tidal influence.

(2) *Trustee.* The head of the Federal agency authorized to manage or protect these resources by statute, or the head of any other single entity designated by it to act as trustee for a specific resource.

(c)(1) *Natural Resource Loss.* Damage to resource of any kind sub-

ject to the management or protection of a Federal agency and lying in or under United States waters that are navigable by deep draft vessels, including waters of the contiguous zone and parts of the high seas to which the National Contingency Plan is applicable and other waters subject to tidal influence, and upland areas serving as habitat for marine mammals and other species subject to the protective jurisdiction of NOAA.

(2) *Trustee.* The Secretary of Commerce or the head of any other single Federal entity designated by it to act as trustee for a specific resource; provided, however, that where resources are subject to the statutory authorities and jurisdictions of the Secretaries of the Departments of Commerce or the Interior, they shall act as co-trustees.

(d)(1) *Natural Resource Loss.* Damages to natural resources protected by treaty (or other authority pertaining to Native American tribes) or located on lands held by the United States in trust for Native American communities or individuals.

(2) *Trustee.* The Secretary of the Department of the Interior, or the head of any other single Federal entity designated by it to act as trustee for specific resources.

§ 300.73 State trustees.

Pursuant to section 111(h)(1) of CERCLA and for purposes of sections 111(h)(1), 111(b) and 107(f) of CERCLA, States may act as trustee for damage to resources within the boundary of a State belonging to, managed by, controlled by, or appertaining to such State.

§ 300.74 Responsibilities of trustees.

(a) The Federal trustees for natural resources shall be responsible for assessing damages to the resources in accordance with regulations promulgated under section 301(c) of CERCLA, seeking recovery for the losses from the person responsible or from the Fund, and devising and carrying out restoration, rehabilitation and replacement plans pursuant to CERCLA.

(b) Where there are multiple trustees, because of co-existing or contiguous natural resources or concurrent

jurisdictions, they shall coordinate and cooperate in carrying out these responsibilities.

Subpart H—Use of Dispersants and Other Chemicals

§ 300.81 General.

(a) Section 311(c)(2)(G) of the Clean Water Act requires that EPA prepare a schedule of dispersants and other chemicals, if any, that may be used in carrying out the plan.

(b) The OSC, with the concurrence of the EPA representative to the RRT and in consultation with the States, may authorize the use of dispersants and other chemicals on oil spills; provided, however, that such dispersants and other chemicals must be on the list of accepted dispersants prepared by EPA.

(c) In the case of dispersants and other chemicals not included on the list of accepted dispersants, EPA will continue to authorize use on a case-by-case basis. Case-by-case approvals will be made by the Administrator or her designee.

**Marine Oil Pollution Liability and Compensation
Regulations, 1982***

*33 C.F.R. §135 (1982).

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- 135.405 Appeal provisions.

AUTHORITY: Title III, Pub. L. 95-372, 92 Stat. 670 (43 U.S.C. 1811 et. seq.); EO 12123, 44 FR 11199; 49 CFR 1.46.

SOURCE: CGD 77-055, 44 FR 16858, Mar. 19, 1979, unless otherwise noted.

PART 135—OFFSHORE OIL POLLUTION COMPENSATION FUND

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Subpart B—Levy of Fees

- 135.101 Purpose.
- 135.103 Levy and payment of barrel fee on OCS oil.
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Subpart A—General

§ 135.1 Purpose.

(a) This part prescribes the policies, procedures, and administrative practices regarding offshore oil pollution liability and compensation, including the administration and general operation of the fund established under

§ 135.3

Title 33—Navigation and Navigable Waters

Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (Pub. L. 95-372, 43 U.S.C. 1811 et. seq.).

§ 135.3 Applicability.

(a) This part applies to each person who:

(1) Owns oil obtained from the Outer Continental Shelf when the oil is produced;

(2) Owns, operates, or is the guarantor of the owner or operator of any vessel;

(3) Owns, operates, or is the guarantor of the owner or operator of any offshore facility;

(4) Sustains an economic loss as a consequence of oil pollution arising from Outer Continental Shelf activities; or

(5) Otherwise has responsibilities under Title III of the Act and the regulations in this part.

§ 135.5 Definitions.

(a) As used in this part, the following terms shall have the same meaning as defined in section 301 of Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (Pub. L. 95-372): "barrel"; "claim"; "discharge"; "facility"; "Fund"; "guarantor"; "incident"; "offshore facility"; "oil pollution"; "operator"; "owner"; "person"; "person in charge"; "public vessel"; and "vessel".

(b) As used in this part:

(1) "Act" means Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (Pub. L. 95-372), entitled "Offshore Oil Spill Pollution Fund".

(2) "Captain of the Port" means a Coast Guard officer designated as Captain of the Port for the areas described in Part 3 of this chapter, or that person's authorized representative or, where there is no Captain of the Port area, the District Commander.

(3) "Commandant" means the Commandant of the Coast Guard or that person's authorized representative.

(4) "District Commander" means the Coast Guard officer commanding a Coast Guard District described in Part 3 of this chapter, or that person's authorized representative.

(5) "Fund Administrator" means the person to whom the authority and functions of the Commandant as administrator of the Fund are delegated.

(6) "Oil" means petroleum, including crude oil or any fraction or residue therefrom and natural gas condensate, except that the term does not include natural gas.

(7) "Outer Continental Shelf" or "OCS" means "outer Continental Shelf" as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C.1331(a)).

§ 135.7 Delegation—Fund Administrator.

(a) The Fund Administrator is delegated authority to perform those functions assigned or delegated to the Secretary of Transportation under the Act not reserved by the Secretary of Transportation or the Commandant.

(b) The Fund Administrator may redelegate and authorize successive redelegations of the authority granted in paragraph (a) of this section within the command under which that person has jurisdiction or to members of the Fund staff.

§ 135.9 Fund address.

(a) The address to which correspondence relating to the Coast Guard's administration of the Fund is to be directed and the location of the Fund Administrator is Offshore Oil Pollution Compensation Fund, U.S. Coast Guard Headquarters (G-W/73), 2100 Second Street, S.W., Washington, D.C. 20593.

Subpart B—Levy of Fees

§ 135.101 Purpose.

(a) The purpose of this subpart is to state the general requirements concerning the levy of fees.

§ 135.103 Levy and payment of barrel fee on OCS oil.

(a) A fee of \$.03 per barrel is levied on all oil produced on the OCS and shall be imposed on the owner of the oil when such oil is produced.

(b) The owner of oil obtained from the OCS shall, for the purpose of computing the barrel fee levied in paragraph (a) of this section, measure OCS

oil production by employing the methods and criteria of the U.S. Geological Survey contained in 30 CFR 250.60 and OCS Order 13.

NOTE: Payment of the fee levied in paragraph (a) of this section is made in accordance with the fee collection regulations issued by the Secretary of the Treasury. The Federal Government entitlement to royalty oil does not constitute ownership of oil at the time of production.

§ 135.105 Adjustment of levy.

(a) The Commandant modifies or suspends by regulation the barrel fee levied in § 135.103(a) to maintain the statutory Fund level.

(b) The Commandant gives at least 90 days notice before any barrel fee modification or suspension becomes effective.

Subpart C—Financial Responsibility for Offshore Facilities

§ 135.201 Applicability.

(a) This subpart applies to the owner or operator of each offshore facility required by the Act to establish and maintain evidence of financial responsibility.

(b) For the purpose of this subpart:

(1) All structures, including platforms, wells, and pipelines, are considered a single offshore facility if they are physically connected, located upstream of the point of custody transfer, within the same oil field, and under one ownership.

(2) If separate parts of a structure, including platforms and pipelines, are owned separately, each part having common ownership is considered a separate offshore facility.

(3) A mobile offshore drilling unit is considered an offshore facility from the moment a drill shaft or other device connected to the unit first touches the seabed or connects to a well for the purposes of exploration, development, or production of oil until drilling is completed and the unit is no longer attached to the well or drill hole by any device.

(4) A mobile offshore drilling unit considered an offshore facility under paragraph (b)(3) of this section remains a separate facility when physically connected to another offshore

facility, unless both are under one ownership.

(5) All segments of a common carrier pipeline from the point of custody transfer to the shore, including any pumping or booster stations, which are under one ownership are considered a single offshore facility.

(6) Any pipeline, which is under one ownership, between two offshore facilities, or between an offshore facility and the shore, is considered a single offshore facility.

(7) Offshore facilities which drill for, produce, or process only natural gas are not subject to this subpart unless the facilities have the capacity to transport, store, or otherwise handle more than 1,000 barrels of condensate at any one time.

NOTE: Regulations governing financial responsibility and certification for vessels are promulgated by the Federal Maritime Commission.

§ 135.203 Amount required.

(a) Each facility that is used for drilling for, producing, or processing oil, or which has the capacity to transport, store, transfer, or otherwise handle more than one thousand barrels of oil at any one time must be covered by evidence of financial responsibility submitted by or on behalf of the owner or operator of the facility, in the amount of \$35,000,000.

(b) Evidence of financial responsibility established and maintained by a person who owns or operates more than one facility, or who has an interest in the ownership or operation of more than one facility, may be applied by that person towards establishing and maintaining the required evidence of financial responsibility for each facility in which that person has an interest, if the evidence is available to satisfy liabilities arising out of incidents involving those facilities.

§ 135.204 Submission of evidence.

(a) Where the offshore facility is owned and operated solely by one person, that person must establish and maintain evidence of financial responsibility covering the facility.

(b) Where the offshore facility is owned in its entirety by one person

and operated solely by another person, evidence of financial responsibility covering the facility must be established and maintained by either the owner or the operator, or, in consolidated form, by both the owner and operator.

(c) Where the offshore facility is owned or operated by more than one person, evidence of financial responsibility covering the facility must be established and maintained by any one of the owners or operators, or, in consolidated form, by or on behalf of two or more owners or operators.

(d) When evidence of financial responsibility is established in a consolidated form, the proportional share of each participant must be shown. The evidence must be accompanied by a statement authorizing the applicant to act for and in behalf of each participant in submitting and maintaining the evidence of financial responsibility.

(e) Each owner and operator of a facility is subject to the penalty provided by section 312(a) of the Act if evidence of financial responsibility is not established and maintained for that facility.

§ 135.205 Methods of establishing.

(a) Evidence of financial responsibility may be established by any one, or any combination acceptable to the Fund Administrator, of the following methods:

- (1) Insurance;
- (2) Guaranty;
- (3) Indemnity;
- (4) Surety bond; or
- (5) Qualification as self-insurer.

(b) The Fund Administrator will accept alternative evidence of financial responsibility if, in the Fund Administrator's opinion, it establishes an equivalent degree of financial responsibility for the purposes of this subpart.

§ 135.207 Insurance as evidence.

(a) Insurance filed with the Fund Administrator as evidence of financial responsibility shall be issued by an insurer that is acceptable to the Fund Administrator. Those insurers may include domestic and foreign insurance companies, corporations or associa-

tions of individual insurers, protection and indemnity associations, or other persons acceptable to the Fund Administrator.

(b) An insurer must:

(1) Agree to be sued directly, within the limits of the policy coverage, by any person for claims under the Act against the owner or operator; and

(2) Designate an agent in the United States for service of process.

(c) Insurance as evidence of financial responsibility must indicate the effective date in the endorsement on the application for Certificate of Financial Responsibility, and must remain in force until the date of termination indicated in the endorsement or until—

(1) 30 days after mailing, by certified mail, to the Fund Administrator, and the person insured, notification of intent to cancel; or

(2) Other evidence of financial responsibility acceptable to the Fund Administrator has been established; or

(3) The facility to which the insurance applies ceases to be a facility under § 135.201(b).

(d) Termination of insurance coverage shall not affect the liability of the insurer for an incident occurring before the effective date of termination.

(e) Confirmation of insurance may be accepted from an insurance broker that is acceptable to the Fund Administrator, subject to the Fund Administrator's approval of the individual underwriters, in lieu of their signature on an application, provided the confirmation:

(1) States the insurance covers liabilities under the Act;

(2) Sets forth the limit and deductible;

(3) Provides for direct action against the individual underwriters to the extent of their contracts;

(4) Names the underwriters and percentages of the limit accepted by each;

(5) States that the underwriters agree to give prior written notice of cancellation or change to the Fund Administrator as required in paragraph (c) of this section; and

(6) States that the notice indicated in paragraph (e)(5) of this section will not affect the underwriter's liability

for incidents occurring before the effective date of cancellation.

§ 135.209 Guaranty as evidence.

(a) Guarantors must:

(1) Agree to be sued directly, within the limits the guaranty, by any person for claims under the Act against the owner or operator; and

(2) Designate an agent in the United States for service of process.

(b) Guaranties filed as evidence of financial responsibility must be accompanied by the same proof that the Guarantor is financially responsible as this subpart would require of the owner or operator; i.e. insurance, surety bond, self-insurance, or other acceptable methods.

(c) A guaranty as evidence of financial responsibility must indicate the effective date in the endorsement on the application for Certificate of Financial Responsibility, and must remain in force until the date of termination indicated in the endorsement or until:

(1) 30 days after mailing, by certified mail, to the Fund Administrator, and the person guarantied, notification of intent to cancel; or

(2) Other evidence of financial responsibility acceptable to the Fund Administrator has been established; or

(3) The facility to which the guaranty applies ceases to be a facility under § 135.201(b).

(d) Termination of the guaranty shall not affect the liability of the guarantor for an incident occurring before the effective date of termination.

§ 135.210 Indemnity as evidence.

(a) An indemnitor must:

(1) Agree to be sued directly, within the limits of the contract coverage, by any person for claims under the Act against the owner or operator to the extent of the indemnity coverage; and

(2) Designate an agent in the United States for service of process.

(b) Indemnity filed as evidence of financial responsibility must be accompanied by the same proof of the indemnitor's financial responsibility as this subpart would require of the owner or operator; i.e. insurance, surety bond, self-insurance; or other acceptable methods.

(c) An indemnity as evidence of financial responsibility must indicate the effective date in the endorsement on the application for Certificate of Financial Responsibility, and must remain in force until the date of termination indicated in the endorsement or until—

(1) 30 days after mailing, by certified mail, to the Fund Administrator, and the person indemnified, notification of intent to cancel; or

(2) Other evidence of financial responsibility acceptable to the Fund Administrator has been established; or

(3) The facility to which the indemnity applies ceases to be a facility under § 135.201(b).

(d) Termination of an indemnity shall not affect the liability of the indemnitor for an incident occurring before the effective date of termination.

§ 135.211 Surety bond as evidence.

(a) Each surety bond filed with the Fund Administrator as evidence of financial responsibility shall be issued by a bonding company that:

(1) Is authorized to do business in the United States;

(2) Is licensed to do business in the state or territory in which the bond is executed;

(3) Is certified by the Department of the Treasury with respect to the issuance of Federal bonds in the penal sum of the bond; and

(4) Designates an agent in the United States for service of process.

(b) The bonding company must agree to be sued directly, within the limits of the surety bond, by any person for claims under the Act against the owner or operator.

(c) A surety bond as evidence of financial responsibility must indicate the effective date in the endorsement on the application for Certificate of Financial Responsibility, and must remain in force until the date of termination indicated in the endorsement or until:

(1) 30 days after mailing, by certified mail, to the Fund Administrator, and the person bonded, notification of intent to cancel; or

(2) Other evidence of financial responsibility acceptable to the Fund Administrator has been established; or

(3) The facility to which the surety bond applies ceases to be a facility under § 135.201(b).

(d) Termination of the surety bond shall not affect the liability of the surety for an incident occurring before the effective date of termination.

§ 135.213 Qualification as self-insurer.

(a) Qualification for self insurance must be supported by a copy of the self-insurer's current balance sheet, income statement, and statement of changes in financial position that are certified by an independent Certified Public Accountant and must be accompanied by either:

(1) An additional statement confirming that the self-insurer's current U.S. assets, including those of consolidated subsidiaries held in the U.S., not including pledged assets or stock not publicly traded, exceed the current U.S. liabilities, and the self-insurers net worth exceeds the amount of the requested self-insurance; or

(2) A statement, based on an analysis of the self-insurer's financial position, which shows that sufficient assets or cash flow, other than which might be damaged as a result of a pollution incident, are available which may be liquidated to provide the funds necessary to retire a claim for the amount of the self-insurance without placing the self-insurer in an insolvent position.

(b) The statements required by paragraphs (a) (1) and (2) of this section must be prepared and submitted by the involved Certified Public Accountant when the required financial statements are prepared in consolidated form and the liability represents less than the full financial backing of the consolidated entity, otherwise they may be prepared and submitted by the Treasurer or equivalent official.

(c) If the self-insurer files a Securities and Exchange Commission Form 10-K report, a copy of the self-insurer's most recent 10-K report must be filed with the Fund Administrator within 120 days after the end of the fiscal year to which it relates, in addi-

tion to filing the most recent 10-K report with the initial application.

(d) Each self-insurer must file annually with the Fund Administrator, copies of documents required under paragraph (a) of this section, within 120 days after the close of the self-insurer's fiscal accounting period. If a self-insurer files a 10-K report with the Fund Administrator under paragraph (c) of this section which contains some of the financial statements required in paragraph (a), a separate filing of those specific statements need not be made.

§ 135.215 Certification.

(a) Applicants shall:

(1) If the facility is in existence before September 17, 1979, apply for a Certificate of Financial Responsibility before September 17, 1979.

(2) If the offshore facility is not in existence on September 17, 1979, apply for a Certificate of Financial Responsibility at least 45 days before placing the offshore facility into operation or coverage becomes effective.

(3) If submitting an application to include an additional facility under previously established evidence of financial responsibility, apply for a Certificate of Financial Responsibility as early as possible before the anticipated date of desired coverage.

(b) Each application for a Certificate of Financial Responsibility must be made on a Coast Guard prescribed Application for Certificate of Financial Responsibility form, available from the Fund Administrator or any Coast Guard District Office. This form must be submitted for each facility; however, if evidence of financial responsibility has been previously established in an amount sufficient to meet § 135.203 (a), no additional evidence need be submitted with the application.

(c) Each application form submitted under this section must be signed by the applicant. A written statement proving authority to sign must also be submitted where the signer is not disclosed as an individual (sole proprietor) applicant, a partner in a partnership applicant, or a director or other officer of a corporate applicant.

(d) Financial data or other information submitted under this section that is proprietary in nature, or constitutes a trade secret, must be clearly designated as such to insure confidential treatment by the Fund Administrator, under 5 U.S.C. 552, the Freedom of Information Act, which provides for exemption from disclosure of trade secret data.

(e) If any of the information submitted for certification is determined by the Fund Administrator to be insufficient the Fund Administrator may require additional information before final consideration of the application.

(f) Certificates, as issued, are to be considered property of the U.S. Government, are not to be altered in any manner, and must be surrendered on demand when revoked in accordance with § 135.223 of this subpart.

(g) Applicants shall obtain a Certificate of Financial Responsibility for each facility.

§ 135.219 Notification of changes affecting certification.

(a) Each owner, operator, or guarantor of an offshore facility shall within ten days notify the Fund Administrator in writing when any changes occur which prevent the owner, operator, or guarantor, from meeting the obligations for which a Certificate of Financial Responsibility has been issued.

(b) Based on notice of a change in financial capability under paragraph (a) of this section, the Fund Administrator may revoke a Certificate of Financial Responsibility.

§ 135.221 Reapplication for certification.

(a) If a Certificate of Financial Responsibility becomes invalid for any reason, an application for a new certificate must be immediately submitted to the Fund Administrator in accordance with § 135.204.

§ 135.223 Certificates, denial or revocation.

(a) A certificate may be denied or revoked for any of the following reasons:

(1) Making any willfully false statement to the Fund Administrator in connection with establishing or maintaining evidence of financial responsibility.

(2) Failure of an applicant or certificant to establish or maintain evidence of financial responsibility as required by the regulations in this subpart.

(3) Failure to comply with or respond to inquiries, regulations, or orders of the Fund Administrator concerning establishing or maintaining evidence of financial responsibility.

(4) Failure to timely file the reports or documents required by § 135.213 (c) and (d).

(5) Cancellation or termination of any insurance policy, surety bond, indemnity, or guaranty issued under this subpart or modification thereto which reduces the financial capacity of the applicant or certificant to meet the requirements of this subpart, unless substitute evidence of financial responsibility has been submitted to and accepted by the Fund Administrator.

(b) Denial or revocation of a certificate shall be immediate and without prior notice in a case where the applicant or certificant:

(1) Is no longer the owner or operator of the offshore facility in question;

(2) Fails to furnish acceptable evidence of financial responsibility in support of an application; or

(3) Permits the cancellation or termination of the insurance policy, surety bond, indemnity, or guaranty upon which the continued validity of the certificate is based.

(c) In any other case, before the denial or revocation of a certificate, the Fund Administrator advises the applicant or certificant, in writing, of the intention to deny or revoke the certificate, and shall state the reason therefor.

(d) If the reason for an intended revocation is failure to file the reports or documents required by § 135.213 (c) and (d) the revocation shall be effective 10 days after the date of receipt of the notice of intention to revoke, unless the certificant shall, before revocation, submit the required material or demonstrate that the required material was timely filed.

(e) If the intended denial or revocation is based upon one of the reasons in paragraph (a)(1) or (a)(3) of this section, the applicant or certificant may request, in writing, a hearing to show that the applicant or certificant

is in compliance with this subpart. If the applicant or certificant fails to file a timely request for a hearing, the denial or revocation is effective 10 days after receipt of the notice.

(f) If a request for a hearing under paragraph (e) of this section is received by the Fund Administrator within 10 days after the date of receipt of a notice of intention to deny or revoke, the Fund Administrator grants a hearing and notifies the requesting party of the date, time, and location of the hearing. If a requesting party fails to enter an appearance at the scheduled hearing, or in lieu thereof fails to submit written evidence for the consideration of the hearing official, denial or revocation is effective as of the scheduled date and time of the hearing, unless an extension of time is granted by the Fund Administrator for good cause shown.

(g) Hearings under this section are informal and are conducted by an official designated by the Fund Administrator. The official conducting the hearing considers all relevant material submitted and makes recommendations to the Fund Administrator.

(h) The Fund Administrator's decision is final agency action.

Subpart D—Notification, Designation, and Advertisement

§ 135.301 Purpose.

(a) This subpart prescribes the requirements concerning notification of pollution incidents, source designation, and advertisement of designations.

§ 135.303 Definitions.

(a) As used in this subpart:

(1) "Advertisement" means the dissemination of information, including methods other than paid advertisements, that advises the public how to contact the designated source of pollution or the Fund to initiate a claim for economic loss.

(2) "Designated source" means a vessel or offshore facility which has been designated by the Commandant as a source of oil pollution.

(3) "Occurrences which pose an imminent threat of oil pollution" means

those incidents that are likely to result in a discharge of oil and include, but are not limited to: vessel collisions, grounding or stranding; structural failure in a tank, pipeline or other oil handling system; fire, explosion or other events which may cause structural damage to a vessel or offshore facility.

NOTIFICATION

§ 135.305 Notification procedures.

(a) The person in charge of a vessel or offshore facility that is involved in an incident, including occurrences which pose an imminent threat of oil pollution shall, as soon as that person has knowledge of the incident, immediately notify by telephone, radio telecommunication or a similar rapid means of communication, in the following order of preference:

(1) (Within or offshore of the 48 contiguous States only) The Duty Officer, National Response Center, U.S. Coast Guard, 400 Seventh Street SW., Washington, D.C. 20590, toll free telephone number 800-424-8802; or

(2) The commanding officer or supervisor of any Coast Guard Marine Safety Office, Captain of the Port Office, Marine Safety Detachment or Port Safety Detachment in the vicinity of the incident; or

(3) The commanding officer or officer in charge of any other Coast Guard unit in the vicinity of the incident; or

(4) The Commander of any Coast Guard District.

(b) Notification given in accordance with this subpart constitutes fulfillment of the requirements of Subpart C of 33 CFR Part 153 concerning Notice of the Discharge of Oil.

§ 135.307 Notification contents.

(a) In each notification provided under § 135.305, the person in charge of the vessel or offshore facility involved in the incident shall provide his or her name and telephone number, or radio call sign, and, to the extent known, the:

(1) Location, date and time of the incident;

(2) Quantity of oil involved;

(3) Cause of the incident;

(4) Name or other identification of the vessel or offshore facility involved;

(5) Size and color of any slick or sheen and the direction of movement;

(6) Observed on scene weather conditions, including wind speed and direction, height and direction of seas, and any tidal or current influence present;

(7) Actions taken or contemplated to secure the source or contain and remove or otherwise control the discharged oil;

(8) Extent of any injuries or other damages incurred as a result of the incident;

(9) Observed damage to living natural resources; and

(10) Any other information deemed relevant by the reporting party or requested by the person receiving the notification.

(b) The person giving notification of an incident must not delay notification to gather all required information and must provide any information not immediately available when it becomes known.

DESIGNATION

§ 135.309 Notice of Designation.

(a) Upon learning of an incident which involves oil pollution, the Commandant designates, where possible, the source of the oil pollution and so notifies the owner, operator and any guarantor.

(b) Designation is made by a written Notice of Designation containing, to the extent known:

(1) The name of the vessel or offshore facility being designated as the source of oil pollution;

(2) The location, date, and time of the incident;

(3) The quantity of oil involved;

(4) The procedures for accepting or denying the designation;

(5) The initial requirements of advertising, if any; and

(6) The name, address and telephone number of the responsible Federal official to whom further communication regarding the incident, advertisement of the incident, or denial of designation should be directed.

§ 135.311 Denial of designation.

(a) The owner, operator or guarantor of a designated source may deny a designation within five days after receipt of a written Notice of Designation.

(b) A denial of designation must be in writing and:

(1) Identify the Notice of Designation; and

(2) Be submitted to the official named in the Notice of Designation.

(c) Failure to deny a designation does not, in and of itself, constitute acceptance of liability under the Act for losses resulting from the incident described in the Notice of Designation.

ADVERTISEMENT

§ 135.313 Advertisement determinations.

(a) The Commandant shall determine whether each incident has caused, or is likely to cause, economic loss covered by section 303 (a) of the Act. Where such loss has occurred or is likely to occur, the type, scope, and frequency of advertisement required shall be determined as provided in paragraph (b) of this section.

(b) In making the determination specified in paragraph (a) of this section, the Commandant considers:

(1) The nature and extent of economic losses that have occurred or are likely to occur;

(2) The persons who are likely to incur economic losses;

(3) the geographical area that is or is likely to be affected;

(4) The most effective method of reasonably notifying potential claimants of the designation and procedures for submitting claims; and

(5) Any relevant information or recommendations submitted by the owner, operator or guarantor of the designated source.

(c) The Commandant provides, in writing, the specific requirements for advertising for each pollution incident to the designated representatives of the owner, operator, or guarantor.

§ 135.315 Types of advertisement.

(a) Advertisement required by this subpart shall be made by one or more of the following means:

§ 135.317

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(1) Paid advertisement in a newspaper, or newspapers, having general circulation in the area designated by the Commandant;

(2) A public service announcement on commercial radio and television stations serving the area designated by the Commandant, when such services are available;

(3) Notice posted in marinas, marine supply stores, bait and tackle shops and other appropriate business establishments or public facilities in the area designated by the Commandant;

(4) News release to all newspapers, radio and television stations serving the area designated by the Commandant; and

(5) Publication in the Notice to Mariners.

§ 135.317 Frequency and geographical scope of advertisement.

(a) The frequency and geographical coverage of advertisement depends upon the circumstances of each incident and will be specified by the Commandant.

(b) When required, the substance of the required advertisement will be published in at least four successive editions of the Local Notice to Mariners.

§ 135.319 Content of advertisement.

(a) Each advertisement required by this subpart must specify the:

(1) Location, date, and time of the incident;

(2) Geographical area affected, as determined by the Commandant;

(3) Quantity of oil involved;

(4) Name or other description of the source designated by the Commandant;

(5) Identity of the owner, operator or guarantor of the source;

(6) Name, address, telephone number, office hours and work days of the person or persons to whom claims are to be presented and from whom claim information can be obtained.

Subpart E—Access, Denial, and Detention

§ 135.401 Access to vessel. Certificates of Financial Responsibility.

(a) The owner, operator, master or agent of any vessel subject to the Act shall, upon request by any Coast Guard officer or petty officer, permit access to the vessel and produce for examination the Certificate of Financial Responsibility.

§ 135.403 Sanctions for failure to produce vessel Certificates of Financial Responsibility.

(a) The Captain of the Port issues denial or detention orders to the owner, operator, agent, or master of any vessel that cannot show upon request a valid Certificate of Financial Responsibility issued under the Act.

(b) A denial order forbids entry of any vessel subject to the Act to any port or place in the United States or to the navigable waters of the United States.

(c) A detention order detains any vessel subject to the Act at the port or place in the United States from which it is about to depart for any other port or place in the United States.

(d) The Captain of the Port terminates a denial or detention order when the owner, operator, agent, or master of a vessel furnishes adequate evidence that the certification of financial responsibility requirements under the Act have been met.

§ 135.405 Appeal provisions.

(a) The owner, operator, agent or master of a vessel issued a denial or detention order under this subpart may petition the District Commander in any manner to review that order.

(b) Upon completion of review, the District Commander affirms, sets aside, or modifies the order.

(c) Unless otherwise determined by the District Commander a denial or detention order remains in effect pending the outcome of any petition or appeal of that order.

(d) The District Commander acts on all petitions or appeals within 10 days of receipt.

