Public Law 96-561
96th Congress

An Act

To provide for the conservation and enhancement of the salmon and steelhead resources of the United States, assistance to treaty and nontreaty harvesters of those resources, and for other purposes.

Dec. 22, 1980
[S. 2163]

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

U.S. salmon and steelhead resources, conservation. Salmon and Steelhead Conservation and Enhancement Act of 1980. 16 USC 3301 note.

TITLE I—CONSERVATION AND ENHANCEMENT OF SALMON AND STEELHEAD RESOURCES

PART A—GENERAL PROVISIONS

SEC. 101. SHORT TITLE.

This title may be cited as the "Salmon and Steelhead Conservation and Enhancement Act of 1980".

SEC. 102. FINDINGS AND PURPOSES.

16 USC 3301.

(a) FINDINGS.—The Congress finds and declares the following:

(1) The stocks of salmon and steelhead which originate in the rivers of the conservation areas constitute valuable and renewable natural resources. Many groups of commercial, recreational, and treaty fishermen have historically depended upon these stocks of fish for their livelihoods and avocations. These fishery resources contribute to the food supply and economic health of the Pacific Northwest and the Nation as a whole, provide valuable recreational experiences for thousands of citizens from various parts of the United States, and represent a central element of the cultures and economies of Indian tribes and the citizens of the Pacific Northwest.

(2) Over a period of several decades, competing uses of salmon and steelhead habitat and historical problems relating to conservation measures, the regulation of harvest and enhancement have depressed several of these stocks of salmon and steelhead.

(3) Improved management and enhancement planning and coordination among salmon and steelhead managers will help prevent a further decline of salmon and steelhead stocks and will assist in increasing the supply of these stocks.

(4) Due in principal part to the Federal court decisions in the United States against Washington and Sohappy against Smith, the fishing capacity of nontreaty fishermen in the conservation areas established by this title exceeds that required to harvest the available salmon resources. This excess capacity causes severe economic problems for these fishermen.

(5) The supply of salmon and steelhead can be increased through carefully planned enhancement measures designed to improve the survival of stocks and to augment the production of artificially propagated stocks. By careful choice of species, areas,

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and stocking procedures, enhancement programs can be used to—

(A) improve the distribution of fish among different groups of treaty and nontreaty fishermen; and

(B) add stability to the treaty and nontreaty fisheries by reducing variations in fish availability.

(b) PURPOSES.—In order to assist the harvesters of the salmon and steelhead resources within the Columbia River conservation area and the Washington conservation area established by this title to overcome temporary dislocations arising from the decisions in the cases of United States against Washington and Sohappy against Smith and from other causes, this title authorizes the establishment of a cooperative program involving the United States, the States of Washington and Oregon, the treaty tribes acting through the appropriate tribal coordinating bodies, and other parties, to—

(1) encourage stability in and promote the economic well being of the treaty and nontreaty commercial fishing and charter fishing industries and improve the distribution of fishing power between treaty and nontreaty fisheries through—

(A) the purchase of nontreaty commercial and charter fishing vessels, gear, and licenses; and

(B) coordinated research, enhancement, and management of salmon and steelhead resources and habitat; and

(2) improve the quality of, and maintain the opportunities for, salmon and steelhead recreational fishing.

16 USC 3302.

SEC. 103. DEFINITIONS.

As used in this title—

(1) The term "appropriate tribal coordinating body" means the Columbia River tribal coordinating body or the Washington tribal coordinating body, as the context requires.

(2) The term "charter vessel" means any vessel licensed by the State to carry passengers for hire for the purpose of recreational salmon fishing.

(3) The term "charter fishing" means fishing undertaken aboard charter vessels.

(4) The term "Columbia River conservation area" means—

(A) all habitat within the Columbia River drainage basin; and

(B) those areas in—

(i) the fishery conservation zone over which the Pacific Fishery Management Council has jurisdiction, and

(ii) the territorial seas of Oregon and Washington,

in which one or more stocks that originate in the habitat describe in subparagraph (A) migrate.

(5) The term "Columbia River tribal coordinating body" means the organization duly authorized by those treaty tribes of the Columbia River drainage basin to coordinate activities for them for purposes of this title.

(6) The term "commercial fishing" means fishing for the purpose of sale or barter.

(7) The term "commercial fishing vessel" or "fishing vessel" means any vessel, boat, ship, or other craft which is licensed for, and used for, equipped to be used for, or of a type which is normally used for, commercial salmon fishing.

(8) The term "enhancement" means projects undertaken to increase the production of naturally spawning or artificially

propagated stocks of salmon or steelhead, or to protect, conserve, or improve the habitat of such stocks.

(9) The term "habitat" means those portions of the land or water, including the constituent elements thereof, (A) which salmon or steelhead occupy at any time during their life cycle, or (B) which affect the salmon or steelhead resources.

(10) The term "recreational fishing" means fishing for personal use and enjoyment using conventional angling gear, and not for sale or barter.

(11) The term "salmon" means any anadromous species of the family Salmonidae and Genus Oncorhynchus, commonly known as Pacific salmon.

(12) The term "salmon or steelhead resource" means any stock of salmon or steelhead.

(13) The term "steelhead" means the anadromous rainbow trout species Salmo gairdneri, commonly known as steelhead.

(14) The term "stock" means a species, subspecies, race, geographical grouping, run, or other category of salmon or steelhead.

(15) The term "treaty" means any treaty between the United States and any treaty tribe that relates to the reserved right of such tribe to harvest salmon and steelhead within the Washington or Columbia River conservation areas.

(16) The term "treaty tribe" means any Indian tribe recognized by the United States Government, with usual and accustomed fishing grounds in the Washington or Columbia River conservation areas, whose fishing right under a treaty has been recognized by a Federal court.

(17) The term "Washington conservation area" means all salmon and steelhead habitat within the State of Washington except for the Columbia River drainage basin, and in the fishery conservation zone adjacent to the State of Washington which is subject to the jurisdiction of the United States.

(18) The term "Washington tribal coordinating body" means the organization duly authorized by the treaty tribes of the Washington conservation area to coordinate their activities for them for the purposes of this title.

PART B—COORDINATED MANAGEMENT OF SALMON AND STEELHEAD

SEC. 110. ESTABLISHMENT AND FUNCTIONS OF SALMON AND STEELHEAD ADVISORY COMMISSION.

16 USC 3311.

(a) ESTABLISHMENT.—Within 90 days after the date of the enactment of this Act, the Secretary of Commerce (hereinafter in this part referred to as the "Secretary") shall establish the Salmon and Steelhead Advisory Commission (hereinafter referred to in this title as the "Commission"), which shall consist of one voting member from each of the following:

(1) The State of Washington.

(2) The State of Oregon.

(3) The Washington tribal coordinating body.

(4) The Columbia River tribal coordinating body.

(5) The Pacific Fishery Management Council.

(6) The National Marine Fisheries Service.

(b) MEMBERSHIP.—(1) The voting representatives shall be appointed by the Secretary from a list of qualified individuals submitted by the Governor of each applicable State, by each appropriate tribal coordinating body, and by the Pacific Fishery Management Council. The

representative for the National Marine Fisheries Service shall be the Northwest regional director of the Service or his designee.

(2) The Commission shall have 6 nonvoting members, 5 of which shall be qualified individuals appointed by the Secretary. The sixth nonvoting member shall be the regional director of the United States Fish and Wildlife Service or his designee.

"Qualified individual."

(3) For the purposes of this subsection, the term "qualified individual" means an individual who is knowledgeable with regard to the management, conservation, or harvesting of the salmon and steelhead resources of the conservation areas.

(c) REPORT BY COMMISSION.—Within 15 months after the date of the establishment of the Commission, it shall prepare, and submit to the Secretary and Congress, a comprehensive report containing conclusions, comments, and recommendations for the development of a management structure (including effective procedures, mechanisms, and institutional arrangements) for the effective coordination of research, enhancement, management, and enforcement policies for the salmon and steelhead resources of the Columbia River and Washington conservation areas, and for the resolution of disputes between management entities that are concerned with stocks of common interest. The principal objectives of, and the standards for, the management structure shall include, but not be limited to—

(1) the development of common principles to govern and coordinate effectively management and enhancement activities;

(2) the prevention of overfishing;

(3) the use of the best scientific information available;

(4) the consideration of, and allowance for, variations among, and contingencies in, fisheries and catches;

(5) the promotion of harvest strategies and regulations which will encourage continued and increased investment by the salmon and steelhead producing jurisdictions;

(6) the optimization of the use of resources for enforcement;

(7) the consideration of harvest activities as they relate to existing and future international commitments;

(8) the minimization of costs and the avoidance of unnecessary duplication; and

(9) the harvest of fish by treaty tribes, in accordance with treaty rights, unless agreed otherwise by the affected treaty tribes.

(d) UNANIMOUS VOTE REQUIRED.—No report or revision thereto may be submitted by the Commission to the Secretary for approval under this section unless the report or revision is approved by all of the voting members of the Commission.

Approval.

(e) SECRETARIAL ACTION ON REPORT.—Within 4 months after the date of the submission of the comprehensive report, or any revision thereto, under subsection (c), the Secretary, in consultation with the Secretary of the Interior, shall review the report and, if he finds that the management structure recommended in the report would, if implemented, meet the objectives and standards specified in this section and be consistent with this title, approve the report. If the Secretary, in consultation with the Secretary of the Interior, finds that such structure is not in conformity with the standards and objectives set forth in this section, the provisions of this title, or other applicable law, he shall return the report to the Commission together with a written statement of the reasons for not approving the report. If the Commission submits a revised report to the Secretary within 2 months after the date of return, the Secretary shall approve the

report if he finds that the objections on which the prior disapproval was based are overcome.

(f) PER DIEM AND TRAVEL ALLOWANCES.—The members of the Commission (other than those who are full-time employees of the Federal or a State government), while away from their homes or regular places of business for purposes of carrying out their duties as members, shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons intermittently employed in Government service.

(g) ADMINISTRATIVE SUPPORT.—The Secretary shall provide such clerical and technical support as may be necessary to enable the Commission to carry out its functions.

(h) TERMINATION OF COMMISSION.—Unless otherwise agreed to by the voting members of the Commission and approved by the Secretary, the Commission shall terminate upon the Secretary's approval of the Commission's report pursuant to subsection (e).

SEC. 111. PRECONDITION FOR ELIGIBILITY FOR ASSISTANCE UNDER PART C. 16 USC 3312.

Upon approval by the Secretary of the Commission's report under section 110, a State represented by a voting member on the Commission and any treaty tribe represented by a tribal coordinating body shall be eligible for financial assistance under part C if the State or treaty tribe enters into an agreement with the Secretary under which that State or treaty tribe obligates itself—

(1) to implement and enforce the provisions of the report and revisions thereto, through laws, regulations, ordinances, or other appropriate means, within such geographical areas and with respect to such persons as may be subject to its jurisdiction and to the extent of its enforcement power; and

(2) to engage in such coordination and consultation as may be necessary or appropriate to ensure, to the maximum extent practicable, that the report and revisions thereto are fully and effectively implemented.

SEC. 112. COORDINATION GRANTS. 16 USC 3313.

The Secretary, in consultation with the Secretary of the Interior, is authorized to establish a program to provide grants to prepare reports and plans provided for in parts B and C in order to promote coordinated research, enforcement, enhancement, and management of the salmon and steelhead resources within the Washington and Columbia River conservation areas consistent with the purposes of this title. Such grants shall be available for use by the State of Washington, the State of Oregon, appropriate tribal coordinating bodies, or any joint governmental entity established for undertaking research, or providing advice on or mechanisms for coordinating management or enforcement, or preparing the reports and plans described in parts B and C.

SEC. 113. DISCONTINUANCE OF ASSISTANCE UNDER PARTS B AND C. 16 USC 3314.

If the Secretary finds that as of the close of the 18th month after secretarial approval of the Commission report under section 110(e), the number of parties which have adopted and implemented the Commission's management program in accordance with the provisions of this title and the report is insufficient to ensure that the management structure is effective and consistent with the standards and objectives in section 110(c), he shall discontinue any further funding under part B or C of this title.

16 USC 3315.

SEC. 114. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary for the purposes of carrying out the provisions of this part in fiscal years commencing after September 30, 1981, an aggregate amount of $3,000,000. Funds appropriated pursuant to this section remain available to the Secretary until expended.

PART C—RESOURCE ENHANCEMENT

16 USC 3321.

SEC. 120. GRANTS FOR PROJECTS UNDER APPROVED ENHANCEMENT PLANS.

(a) AUTHORITY.—The Secretary of the Interior (hereinafter referred to in this part as the "Secretary"), in consultation with the Secretary of Commerce, is authorized to establish a program to provide grants for projects for the enhancement of the salmon and steelhead resources of the Washington conservation area and the Columbia River conservation area.

(b) PLANS.—Any such project in the Washington conservation area must be in accordance with a comprehensive enhancement plan developed and agreed to by the State of Washington and the Washington tribal coordinating body within 18 months after the date of enactment of this title. Any enhancement project in the Columbia River conservation area must be in accordance with a comprehensive enhancement plan developed and agreed to by the State of Washington, the State of Oregon, and the Columbia River tribal coordinating body within 18 months after the date of enactment of this title. Such plans must be approved by the Secretary, in consultation with the Secretary of Commerce, as provided in this part. The States shall solicit and consider the comments and views of interested commercial and recreational fishermen, and other interested parties, in developing the comprehensive enhancement plan.

(c) SCOPE.—Each comprehensive enhancement plan, and any revisions, or modifications of such plan, shall describe all enhancement projects in the conservation area, and associated stocking policies (when relevant), including any related research necessary to such enhancement anticipated by the States and the treaty tribes (acting through the appropriate tribal coordinating body) for a period of at least 5 years.

(d) STANDARDS.—Each comprehensive enhancement plan shall include such standards, restrictions, or conditions as are necessary, to assure that any project included in the plans contributes to the balanced and integrated development of the salmon and steelhead resources of the area. Such standards shall include, but not be limited to, provisions designed to—

(1) assure that all commercial and recreational fishermen and the treaty tribes shall have a reasonable opportunity to participate in the benefits, considered as a whole, of the salmon and steelhead resources development;

(2) minimize, to the extent practicable, significant adverse interaction between naturally spawning and artifically propagated stocks;

(3) ensure that all projects included within the plan are designed to complement the contribution of sound State, Federal, and tribal enhancement activities;

(4) ensure that all projects included within the plan are economically and biologically sound and supported by adequate scientific research;

(5) assure that all projects included within the plan achieve significant benefits relative to the overall cost of each such project;

(6) consider the effect of enhancement activities as they relate to existing and future international commitments; and

(7) notwithstanding any of the above measures, provide for the harvest of fish by treaty tribes in accordance with treaty rights, unless agreed otherwise by the affected treaty tribes.

(e) APPROVAL.—(1) The Secretary, in consultation with the Secretary of Commerce, shall review each comprehensive enhancement plan and approve such plan within 120 days of the date of its receipt, if found to be consistent with this title and other applicable law. If the Secretary, in consultation with the Secretary of Commerce, finds that a plan is not in conformity with the provisions of this title or other applicable law, he shall return such plan to the State of Washington or the State of Oregon, or both, as appropriate, and the appropriate tribal coordinating body with recommendations.

(2) Upon receiving such a plan, the Secretary, in consultation with the Secretary of Commerce, shall—

Publication in Federal Register.

(A) publish a notice in the Federal Register of the availability of the plan;

(B) provide a copy of the plan to the Pacific Fishery Management Council and, upon request, to any other interested person or group, and solicit and consider the comments and views of such persons or groups with respect to the plan;

(C) undertake a biological and technical review of the plan, in consultation with individuals who are knowledgeable with regard to the management, conservation, enhancement, and harvest of the salmon and steelhead resources of the area;

(D) provide a copy of the plan to and consult with the Secretary of State and the Secretary of Commerce, with respect to the effect of such plan on any international fisheries; and

(E) determine whether the State of Washington or the State of Oregon, as appropriate, and the treaty tribes, acting through their chosen agency or agencies, have the authority to carry out the plan in accordance with this title, and in accordance with standards included within the plan.

(3) The Secretary, in consultation with the Secretary of Commerce, shall not approve a comprehensive enhancement plan unless the State of Washington or the State of Oregon, or both, as appropriate, and the treaty tribes, acting through the appropriate tribal coordinating body, agree not to undertake any salmon or steelhead enhancement project, using funds provided pursuant to this part or otherwise, that would be inconsistent with the plan.

(4) The Secretary may not approve a comprehensive plan unless the Secretary of Commerce concurs that such plan satisfactorily complies with standards (1), (6), and (7) of subsection (d) of this section.

(f) REVIEW, MODIFICATION, OR REVISIONS.—Each comprehensive enhancement plan shall be reviewed periodically. The Secretary, the Secretary of Commerce, the State of Washington, the State of Oregon, or the appropriate tribal coordinating body may request a review, modification, or revision of a plan at any time. Any revision or modification of a plan, developed and agreed to by the State of Washington or the State of Oregon, as appropriate, and the appropriate tribal coordinating body, shall be approved by the Secretary, in consultation with the Secretary of Commerce, within 45 days of receipt of the proposed revision or modification, if such revision or modification is in conformity with this title and other applicable law.

The Secretary, in consultation with the Secretary of Commerce, may withdraw approval of a plan if he finds that (1) the plan or its implementation is not consistent with this title, and (2) no modification or revision has been agreed to by the State of Washington or the State of Oregon, as appropriate, and the appropriate tribal coordinating body to correct any such inconsistencies.

16 USC 3322.

SEC. 121. ENHANCEMENT PROJECTS.

After the approval of a comprehensive enhancement plan, the State of Washington, the State of Oregon, or a treaty tribe acting through the appropriate tribal coordinating body may submit project proposals to the Secretary in such manner and form as the Secretary shall prescribe. Such application shall include, but not be limited to—

(1) plans, specifications, and cost estimates of the proposed enhancement project, including estimates of both the capital construction costs of the project and the operation and maintenance costs after commencement of the project;

(2) the enhancement goals that are sought to be achieved by the proposed project, including, but not limited to—

(A) a description of the affected stock;

(B) an analysis of the expected impacts on the salmon and steelhead resource; and

(C) a projection of the expected impacts on each type of commercial, recreational and treaty Indian fishing;

(3) evidence that the State of Washington, the State of Oregon, or the treaty tribe, acting through its chosen agency or agencies, has obtained or is likely to obtain any necessary titles to, interests in, rights-of-way over, or licenses covering the use of the relevant land;

(4) an analysis of, and supporting data for, the economic and biological integrity and viability of the project;

(5) such other information as the Secretary, in consultation with the Secretary of Commerce, determines is necessary to assure that the proposed project is consistent with the approved enhancement plan and the provisions of this title; and

(6) after approval of the Commission's report pursuant to section 110 of this title, documentation that the appropriate State or treaty tribe submitting or undertaking the project proposal has adopted and begun all necessary implementation of the Commission's management program.

16 USC 3323.

SEC. 122. APPROVAL AND FUNDING OF PROJECTS.

(a) IN GENERAL.—The Secretary, in consultation with the Secretary of Commerce, may approve any project that is consistent with an approved enhancement plan and the provisions of this title, and shall promptly notify the States, the treaty tribes and, upon request, any other interested party of the approval of a project and the amount of funding made available under this title for such project.

(b) LIMITATIONS ON FEDERAL SHARE.—The total Federal share of all enhancement projects funded annually by this section shall not exceed 50 percent of the total amount expended for such projects, except that this limitation shall not apply to projects proposed by treaty tribes acting through the appropriate tribal coordinating body. A State share may include both real and personal property. Title to, or other interest in, such property shall remain within the State. The State of Washington shall be treated on the date of the enactment of this title as having expended $32,000,000 (reduced by the amount treated as expended by the State under section 135 of this title) on

enhancement projects set forth in the plan which are eligible for assistance under this title. The Federal share shall be paid in such amounts and at such times as the Secretary deems appropriate, consistent with this title and the goals of the comprehensive plan.

SEC. 123. REVIEW OF ENHANCEMENT PROJECTS. 16 USC 3324.

The Secretary, in cooperation with the Secretary of Commerce, shall establish, in consultation with the State of Washington, the State of Oregon, and the appropriate tribal coordinating body, a system to monitor and evaluate on a continuing basis all enhancement projects for which funds have been distributed under this part, and may discontinue or suspend distribution of all or part of the funds if any project is not being carried out in a manner consistent with the comprehensive enhancement plan concerned and this title. Each recipient of a grant under this part shall make available to the Secretary and to the Comptroller General of the United States for purposes of audit and examination, any book, document, paper, and record that is pertinent to the funds received under the grant.

SEC. 124. AUTHORIZATION OF APPROPRIATIONS. 16 USC 3325.

(a) SALMON ENHANCEMENT.—For purposes of carrying out the provisions of this part for salmon enhancement (including, but not limited to, the operation and maintenance of enhancement facilities) there are authorized to be appropriated not to exceed $45,000,000 for the ten-year period beginning on October 1, 1982, for the Washington conservation area, and not to exceed $25,000,000 for the ten-year period beginning on such date for the Columbia River conservation area.

(b) STEELHEAD ENHANCEMENT.—In addition to the amounts authorized under subsection (a), there are authorized to be appropriated to carry out steelhead enhancement projects under this part (including, but not limited to, operation and maintenance of enhancement facilities) not to exceed $7,000,000 for the ten-year period beginning on October 1, 1982, for the Washington conservation area; and not to exceed $7,000,000 for the ten-year period beginning on such date for the Columbia River conservation area.

(c) LIMITATION.—No moneys appropriated pursuant to subsection (a) or (b) may be used for the operation and maintenance of enhancement programs and related facilities as they existed on or before the date of the approval by the Secretary under section 120 of the enhancement plan for the conservation area concerned.

PART D—COMMERCIAL FISHING FLEET ADJUSTMENT

SEC. 130. FLEET ADJUSTMENT PROGRAM. 16 USC 3331.

(a) IN GENERAL.—The Secretary of Commerce (hereinafter referred to in this part as the "Secretary"), upon approval of a program submitted pursuant to section 132 of this part, is authorized to distribute Federal funds to the State of Washington (hereinafter in this part referred to as the "State"), subject to the standards, conditions, and restrictions set forth in this part, for the purchase of commercial fishing and charter vessels (including the associated fishing gear) and licenses by the State in accordance with the provisions of this part. The Federal share payable under this part shall not exceed 75 percent of the total cost of the program.

(b) LEGAL TITLE.—Title to any vessel or other personal property purchased under a State program approved by the Secretary in accordance with the provisions of this part shall vest upon purchase

in the State. If the State sells such vessels or other property, title may pass in accordance with such sale.

16 USC 3332.

SEC. 131. STANDARDS.

The State shall submit to the Secretary a program within three months of the date of enactment of this title designed to—

(1) provide incentives for early retirement of licenses, or early sale of vessels;

(2) set aside specific allocations of funds for each gear type to achieve the specific fleet reductions provided for in the program;

(3) obtain an effective and expeditious reduction in the overall fishing capacity of and the number of vessels and licenses in the non-Indian commercial and charter salmon fishing fleets in the Washington conservation area; and

(4) provide State funding for 25 per centum of the total cost of the program.

16 USC 3333.

SEC. 132. PROGRAM APPROVAL.

(a) SUBMISSION FOR APPROVAL.—The State shall submit its program and submit revisions, modifications, or amendments to the Secretary in accordance with standards established pursuant to section 131 and in such manner and form as the Secretary shall prescribe.

(b) REQUIREMENTS FOR APPROVAL.—Prior to approving such program or any revision, modification, or amendment, and authorizing Federal funds to be distributed in accordance with this part, the Secretary must find that—

(1) the State, acting through its chosen agency or agencies, has authority to carry out a commercial and charter vessel fleet reduction program in accordance with the provisions of this part;

(2) the State program provides that a fishing or charter vessel may not be purchased by the State from other than the person who owned the vessel on the date of the enactment of this title;

(3) the State program prevents the expenditure of a disproportionate amount of funds available for vessel acquisition on vessels owned by any one person;

(4) the State program prohibits the purchase of any fishing or charter vessel unless all State commercial and charter salmon fishing licenses attached to the vessel are also sold to the State;

(5) the State program provides that no person may purchase from the State any vessel which that person or a member of that person's immediate family had previously sold to the State;

(6) the State program provides that no person may purchase any vessel sold to the State pursuant to the program and use such vessel for commercial or charter salmon fishing in the Washington conservation area, unless State law provides that the use of such vessel could not result in any additional fishing effort in the non-Indian fishing fleet;

(7) the State program provides for purchase of vessels at their fair market value;

(8) the State program provides for the reduction of salmon fishing licenses, through purchase of such licenses at their fair market value, and the use of bonuses and schedules, to—

(A) secure an early retirement from the salmon fishery;

(B) recognize productiveness if the commercial harvesters using a gear type wish that gear type's specific allocation of funds to recognize productiveness; and

(C) recognize passenger-carrying capacity for charter fishing licenses;

(9) the State program provides, with respect to marginally productive commercial salmon fishermen, for the purchase of their salmon fishing licenses, but not their fishing vessels;

(10) the State maintains a moratorium, or similar program, to preclude the issuance of new commercial or charter salmon fishing licenses; and

(11) the State has established a revolving fund for the operation of the fleet reduction program that includes an individual account for each category of fishing license (based on type of fishing gear used) and that any moneys received by the State or its agents from the resale of any fishing vessel or gear purchased under the program (A) shall be placed in such revolving fund, (B) shall, for at least 2 years from the date of the program's inception, be placed in the appropriate individual account, and (C) shall be used exclusively to purchase commercial fishing and charter vessels and licenses in accordance with the provisions of this part. Revolving fund.

(c) SECRETARIAL ACTION.—The Secretary shall approve such program within ninety days of the date of receipt of the program if found to be consistent with this title and other applicable law. If the Secretary finds that such program is not in conformity with the provisions of this title or other applicable law, he shall return such program to the State with recommendations. Any revision, modification, or amendment to the program shall be approved within thirty days of receipt unless found to be inconsistent with this title or other applicable law.

SEC. 133. REVIEW BY SECRETARY. 16 USC 3334.

(a) IN GENERAL.—The Secretary shall conduct a continuing review of the State program to determine whether the program remains consistent with this title or other applicable law. Such review shall include a biennial audit of the records of the State program.

(b) ACTION UPON FINDING OF NONCOMPLIANCE.—If the Secretary finds that the program or the administration thereof is no longer in compliance with this part, he shall reduce or discontinue distribution of funds under this part, or take other appropriate action.

(c) DISPOSITION OF CERTAIN MONEYS.—If the Secretary finds that any money provided to the State or obtained by the State from the resale of any fishing or charter vessel purchased under the program is not being used in accordance with the provisions of this part, the Secretary shall recover from the fund, and place in the United States Treasury, such moneys.

SEC. 134. AUTHORIZATION OF APPROPRIATIONS. 16 USC 3335.

There are authorized to be appropriated to the Secretary, for the purposes of carrying out the provisions of this part, $37,500,000 for the 5-year period beginning October 1, 1981.

SEC. 135. SPECIAL PROVISION. 16 USC 3336.

On the date the Secretary approves the program under section 132, the State shall be treated as having expended such portion of $32,000,000 as the State deems appropriate for purposes of implementing the program.

79-194 O—81—pt. 3——41 : QL3

PART E—MISCELLANEOUS

16 USC 3341.

SEC. 140. REGULATIONS.

The Secretary of Commerce and the Secretary of the Interior may each promulgate such regulations, in accordance with section 553 of title 5, United States Code, as may be necessary to carry out his functions under this title.

16 USC 3342.

SEC. 141. REPORTS AND MONITORING.

(a) REPORTS.—The State of Washington, the State of Oregon, and the appropriate tribal coordinating bodies shall submit to the appropriate Secretary an annual report on the status of the programs authorized by this title or any other relevant report requested by such Secretary.

(b) MONITORING.—After the 18-month period after approval of the report of the Salmon and Steelhead Advisory Commission under Part B, the Secretary of Commerce shall establish a system to monitor and evaluate on a continuing basis whether the management program set forth in the report is being effectively implemented. If at any time after the monitoring system is established, the Secretary finds that—

(1) the number of parties referred to in section 113 has been reduced to the extent that such program cannot be implemented effectively; or

(2) the general implementation of the program is ineffective;

the Secretary shall immediately discontinue any further funding under part C.

16 USC 3343.

SEC. 142. RELATIONSHIP TO PROVISIONS OF FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976.

(a) CONSISTENCY.—Nothing in this title shall be construed as affecting the provisions of title III of the Fishery Conservation and Management Act of 1976 as it applies with respect to fishery management plans and their application to any fishery, except that the Pacific Fishery Management Council shall ensure that existing and future fishery management plans are consistent with any recommended program approved under section 110 and any enhancement plan under part C.

16 USC 1851.

(b) FLEET MOBILITY.—The Secretary of Commerce in coordination with the Pacific Fishery Management Council in its salmon management plan shall ensure that the fishing effort reduction that results from the fleet adjustment program of part D and the license moratorium of the State of Washington is not replaced by new fishing effort from outside such State.

16 USC 3344.

SEC. 143. RELATION TO OTHER LAWS.

Nothing in this title shall be construed—

(1) to diminish Federal, State, or tribal jurisdiction, responsibility, or rights in the field of resource enhancement and management, or control of water resources, submerged lands, or navigable waters; nor to limit the authority of Congress to authorize and fund projects; or

(2) as superseding, modifying, or repealing any existing applicable law, except as provided for in section 143 of this title.

16 USC 3345.

SEC. 144. AUTHORIZATION OF ADDITIONAL APPROPRIATION.

In addition to other authorizations of appropriations contained in this title, there are authorized to be appropriated to the Secretary of Commerce beginning October 1, 1981, an amount not to exceed $5,000,000 for the purpose of developing fisheries port facilities in the

"(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.

Application for grants.

"(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.

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: 46 USC 1271.

(1) Section 1101 is amended: Definitions. 46 USC 1271.

(A) in subsection (h) by striking "equipping; and" and substituting "equipping;";

(B) in subsection (i) by striking "mark." and substituting "mark;"; and

(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,

"(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"; and

(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

Ante, p. 3291.

(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

Ante, p. 3291.

(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.

(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.

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.

Foreign fishing, total allowable level.

"(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—

"(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.

Annual fishing level.

"(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.

Allowable levels, allocation.

"(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—

"(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 recomendation 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;

"(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.

(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).

Ante, p. 3296.

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.

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.