

(D) Whenever a matter has been referred by a council under subparagraph (A) of this paragraph and the Secretary or the Attorney General fails within 60 days of such referral to take appropriate action, the council may, upon filing notice with the Secretary or Attorney General, as appropriate, and other interested parties, bring an action in its own name.

(b) Recovery of costs

(1)(A) When a council brings an action under subsection (a)(2) of this section, the council may recover costs of litigation and, where the action is brought to collect an unpaid assessment, interest from the date the amount became due and payable.

(B) Any person who violates any provision of an order (including a cease and desist order previously issued under this paragraph) or regulation issued by the Secretary under this chapter, or who fails or refuses to pay, collect, or remit any assessment required under this chapter, may be assessed a civil penalty by the Secretary of not less than \$500 nor more than \$5,000 for each such violation. Each violation shall be a separate offense. In addition to, or in lieu of, a civil penalty under this subparagraph, the Secretary may issue an order requiring such person to cease and desist from continuing such violation.

(C) No penalty shall be assessed, or cease and desist order issued, under this paragraph unless the affected person is given notice and opportunity for a hearing before the Secretary with respect to such violation.

(D) Any order of the Secretary under this paragraph assessing a penalty or imposing a cease and desist order shall be final and conclusive, unless the affected person files an appeal from the Secretary's order with the appropriate United States court of appeals.

(2)(A) Any person against whom a violation is found under paragraph (1) of this subsection may obtain review of such action in the United States court of appeals for the circuit in which such person resides or has his place of business, or in the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within thirty days after the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary.

(B) The Secretary shall promptly file in the court a certified copy of the record upon which such violation was found.

(C) The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence or not in accordance with law.

(3)(A) If any person fails to pay a civil penalty under this subsection after it has become final, the Secretary shall refer the matter to the Attorney General.

(B) The Attorney General shall institute appropriate action to recover the amount assessed under this subsection in a district court of the United States.

(C) If, within sixty days after such referral, the Attorney General fails to institute such appropriate action, the council to whose programs the assessment, order or regulation relates may institute an action in its own name.

(Pub. L. 99-659, title II, §217, Nov. 14, 1986, 100 Stat. 3730.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4011 of this title.

§ 4017. Investigations

(a) Authority to make investigations

The Secretary may make such investigations as the Secretary determines necessary to—

(1) carry out the Secretary's responsibilities under this chapter; and

(2) determine whether any person has engaged in any act or practice which constitutes a violation of the provisions of this chapter.

(b) Oaths and affirmations

For the purpose of investigations under subsection (a) of this section, the Secretary may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents which are relevant to the inquiry. The attendance of such witnesses and the production of any such records may be required from any place in the United States.

(c) Court orders

In case of contumacy or refusal to obey a subpoena issued under this section by any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or has his business, to require the attendance and testimony of witnesses and the production of books, papers, and documents. Such court may issue an order requiring such person to appear before the Secretary to produce records or to give testimony relating to the matter under investigation.

(Pub. L. 99-659, title II, §218, Nov. 14, 1986, 100 Stat. 3731.)

CHAPTER 61—INTERJURISDICTIONAL FISHERIES

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§ 4101. Congressional statement of purposes

The purposes of this chapter are—

(1) to promote and encourage State activities in support of the management of interjurisdictional fishery resources; and

(2) to promote and encourage management of interjurisdictional fishery resources throughout their range.

(Pub. L. 99-659, title III, §302, Nov. 14, 1986, 100 Stat. 3732.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title III of Pub. L. 99-659, Nov. 14, 1986, 100 Stat. 3731, which is classified principally to this chapter. For complete classification of title III to the Code, see Short Title note set out below and Tables.

EFFECTIVE DATE

Section 310 of title III of Pub. L. 99-659 provided that: "This title [enacting this chapter and repealing chapter 10D (§779 et seq.) of this title] takes effect October 1, 1987."

SHORT TITLE

Section 301 of title III of Pub. L. 99-659 provided that: "This title [enacting this chapter and repealing chapter 10D (§779 et seq.) of this title] may be cited as the 'Interjurisdictional Fisheries Act of 1986'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4104 of this title.

§ 4102. Definitions

For the purposes of this chapter:

(1) The term "Federal fishery management plan" means a plan developed under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(2) The term "fishery resource" means finfish, mollusks, crustaceans, and any other form of marine animal or plant life, other than marine mammals and birds.

(3) The term "interjurisdictional fishery resource" means—

(A) a fishery resource for which a fishery occurs in waters under the jurisdiction of one or more States and the exclusive economic zone established by Proclamation Numbered 5030, dated March 10, 1983;

(B) a fishery resource for which there exists an interstate fishery management plan; or

(C) a fishery resource which migrates between the waters under the jurisdiction of two or more States bordering on the Great Lakes.

For purposes of applying section 4104(a)(3) of this title during fiscal year 1987, a Federal fishery management plan or an interstate fishery management plan for the fishery resource need not be in existence, but a plan of either kind for that resource must be in the development process during that year.

(4) The term "interstate fishery management plan" means a plan for managing fisheries developed and adopted by an interstate commission.

(5) The term "interstate commission" means a commission or other administrative body established by an interstate compact.

(6) The term "interstate compact" means a compact that has been entered into by two or

more States, established for the purposes of conserving and managing interjurisdictional fishery resources throughout their range, and consented to and approved by Congress.

(7) The term "project" means a program for research in support of the management of an interjurisdictional fishery resource or an interstate cooperative fishery management agreement.

(8) The term "Secretary" means the Secretary of Commerce.

(9) The term "State" means any of the several States of the United States, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, or the Northern Mariana Islands.

(10) The term "State agency" means any department, agency, commission, or official of a State authorized under the laws of the State to regulate commercial fisheries or enforce laws relating to commercial fisheries.

(Pub. L. 99-659, title III, §303, Nov. 14, 1986, 100 Stat. 3732.)

REFERENCES IN TEXT

The Magnuson Fishery Conservation and Management Act, referred to in par. (1), is Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, which is classified principally to chapter 38 (§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.

Proclamation Numbered 5030, referred to in par. (3)(A), is set out under section 1453 of this title.

§ 4103. Apportionment

(a) Time when apportionments made

Funds appropriated under section 4107(a) of this title shall be apportioned by the Secretary among the States on October 1 of each fiscal year, or as soon thereafter as practicable.

(b) Apportionment formula

The amount of funds apportioned to each State shall be determined by the Secretary as the ratio which the equally weighted average of the volume and value of fishery resources harvested by domestic commercial fishermen and received within such State during the 3 most recent calendar years for which data satisfactory to the Secretary are available bears to the total equally weighted average of the volume and value of all fishery resources harvested by domestic commercial fishermen received within all of the States during those calendar years.

(c) Limitations

(1) No State may receive an apportionment under subsection (b) of this section for either fiscal year 1987 or fiscal year 1988 which is less than one-half of one percent of the total amount of funds available for that fiscal year.

(2) For any fiscal year after fiscal year 1988, no State that, under the apportionment formula in subsection (b) of this section, has a ratio of one-third of one percent or higher may receive an apportionment for any fiscal year which is less than one percent of the total amount of funds available for that fiscal year.

(3) For any fiscal year after fiscal year 1988, no State may receive an apportionment under this section for any fiscal year if that State's ratio

under the apportionment formula in subsection (b) of this section is less than one-third of one percent, unless the State—

(A) is signatory to an interstate fishery compact;

(B) has entered into an agreement with the Secretary or the Secretary of the Interior under which the personnel, services, and equipment of the State and the Federal agency concerned will be made mutually available for the enforcement of Federal and State laws pertaining to the protection of fishery resources which are managed under an interstate fishery management plan;

(C) borders one or more of the Great Lakes; or

(D) has entered into an interstate cooperative fishery management agreement and has in effect an interstate fisheries management or interstate fisheries research program.

(4) No State that, under the apportionment formula in subsection (b) of this section, has a ratio of less than one-third of one percent and meets any of the requirements set forth in paragraph (1)(A), (B), (C), or (D) may receive an apportionment for any fiscal year which is less than one-half of one percent of the total amount of funds available for apportionment for such fiscal year.

(5) No State may receive an apportionment for any fiscal year under this section which is more than 6 percent of the total amount of funds available for apportionment for such fiscal year.

(d) Unused apportionments

Any part of an apportionment for any fiscal year to any State—

(1) that is not obligated during that year;

(2) with respect to which the State notifies the Secretary that it does not wish to receive that part; or

(3) that is returned to the Secretary by the State,

may not be considered to be apportioned to that State and shall be added to such funds as are appropriated pursuant to section 4107(a) of this title for the next fiscal year (and shall be treated as having been appropriated for such next year) for apportionment under subsection (a) of this section. Any notification or return of funds referred to in paragraph (2) or (3) by a State is irrevocable.

(Pub. L. 99-659, title III, §304, Nov. 14, 1986, 100 Stat. 3733; Pub. L. 101-627, title V, §501, Nov. 28, 1990, 104 Stat. 4462.)

AMENDMENTS

1990—Subsec. (c)(3)(B). Pub. L. 101-627 inserted “which are managed under an interstate fishery management plan” before semicolon at end.

§ 4104. State projects

(a) In general

(1) Any State may, through its State agency or an interstate commission, submit to the Secretary a proposal for a project which includes full plans, specifications, and cost estimates for such project. The total cost of all items included for engineering, planning, inspection, and unforeseen contingencies in connection with any

works to be constructed as part of such a proposed project shall not exceed 10 percent of the total cost of such works, and shall be paid by the State as a part of its contribution to the total cost of the works.

(2) No part of any funds appropriated under any authorization contained in section 4107 of this title may be obligated with respect to any project until the proposal for such project has been submitted under paragraph (1) and approved by the Secretary. The Secretary, before approving any proposal for a project, must evaluate the proposal as to—

(A) the soundness of design;

(B) the possibilities of securing productive results;

(C) the minimization of duplication with other research projects in support of the management of interjurisdictional fishery resources and carried out under this chapter or under any other law or regulation;

(D) the organization and management of the project;

(E) the methods proposed for monitoring and evaluating the success or failure of the project;

(F) the consistency of the project with the purposes of this chapter specified in section 4101 of this title; and

(G) such other criteria as the Secretary may prescribe.

(3) The Federal share of the cost of any project conducted under this chapter shall not exceed 75 percent of the total estimated cost of the project, unless—

(A) the State has adopted an interstate fishery management plan for the resource to which the project applies; or

(B) the State has adopted fishery regulations which the Secretary has determined are consistent with any Federal fishery management plan for the species to which the project applies;

in which case the Federal share shall not exceed 90 percent of the total estimated cost of the project.

(4)(A) If the Secretary approves or disapproves a proposal for a project, the Secretary shall promptly give written notification, including, if disapproved, a detailed explanation of the reasons for the disapproval, to the State agency submitting the proposal or, if the proposal is submitted through an interstate commission, such commission and the State.

(B) For the purposes of this chapter, funds apportioned under this section to any State shall be treated as having been obligated with respect to a project during the fiscal year in which the written notification of approval required under subparagraph (A) for the project proposal is made.

(b) Restriction

The expenditure of funds under this chapter shall be applied only to projects for which a proposal has been approved under subsection (a) of this section, except that up to \$25,000 each fiscal year may be obligated for a State to carry out an agreement with the Secretary or the Secretary of the Interior under which the personnel,

services and equipment of the State and the Federal agency concerned will be made mutually available for the enforcement of Federal and State laws pertaining to the protection of fishery resources. If otherwise applied, such funds shall be replaced by the State before the State may receive any additional funds under this chapter.

(c) Payment

When the Secretary determines that a project carried out under a proposal approved by the Secretary has been completed, or where the Secretary otherwise deems it appropriate, the Secretary shall cause to be paid to the proper authority of the State, or to the official or depository designated by the interstate commission if the State agency specifies that payment is to be made to the interstate commission, the Federal share of the project. Any payment made to an interstate commission shall be charged against the apportionment of the State concerned.

(Pub. L. 99-659, title III, §305, Nov. 14, 1986, 100 Stat. 3734.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4102, 4106 of this title.

§ 4105. Property

(a) Application of Federal and State laws

All work, including the furnishing of labor and materials, needed to complete any project approved by the Secretary shall be performed in accordance with applicable Federal and State laws under the direct supervision of the State agency, and in accordance with regulations as the Secretary may prescribe.

(b) Title

Title to all property, real and personal, acquired for the purposes of completing any project approved by the Secretary vests in the State.

(c) Disposal

If a State disposes of any real or personal property acquired under this chapter, the State shall pay into the Treasury of the United States the amount of any proceeds resulting from the property disposed to the extent of and in the same ratio that funds provided under this chapter were used in the acquisition of the property. In no case shall the amount paid into the Treasury of the United States under this section exceed the amount of funds provided by this chapter for the acquisition of the property involved.

(Pub. L. 99-659, title III, §306, Nov. 14, 1986, 100 Stat. 3735.)

§ 4106. Reports to Congress

After consultation with the States receiving funds under this chapter and with any interstate commission involved in carrying out a project under this chapter, the Secretary shall submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than 90 days after the end of the fiscal year 1988, and each

second fiscal year occurring after that fiscal year, a report which contains—

(1) a description of each project and law enforcement effort receiving funds under this chapter during the last 2 fiscal years ending before such report is submitted;

(2) a specification of the total amount of funds from the Federal Government and the total amount of funds from each State spent on each project and a law enforcement effort receiving funds under this chapter during the last 2 fiscal years ending before such report is submitted;

(3) an assessment of each project and law enforcement effort receiving funds under this chapter during the last 2 fiscal years ending before such report is submitted to determine whether such project is furthering the purposes of this chapter; and

(4) a statement specifying all funds which have been apportioned pursuant to section 4104(a) of this title and are available for obligation by a State or the Secretary but which have not been obligated.

(Pub. L. 99-659, title III, §307, Nov. 14, 1986, 100 Stat. 3735.)

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction given primarily to Committee on Transportation and Infrastructure of House of Representatives, and remainder of jurisdiction given to Committees on National Security and on Resources of House of Representatives, by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

§ 4107. Authorization of appropriations

(a) General appropriations

There are authorized to be appropriated to the Department of Commerce for apportionment to carry out the purposes of this chapter \$5,000,000 for each of the fiscal years 1989, 1990, 1991, 1992, 1993, 1994, and 1995.

(b) Additional appropriations

In addition to the amounts authorized in subsection (a) of this section, there are authorized to be appropriated to the Department of Commerce \$65,000,000 for each of the fiscal years 1994 and 1995, which shall be available in such amounts as the Secretary may determine appropriate for the purposes of this chapter; except that—

(1) in providing funds to States under this subsection, the Secretary shall give a preference to those States regarding which the Secretary determines there is a commercial fishery failure or serious disruption affecting future production due to a fishery resource disaster arising from natural or undetermined causes, and any sums made available under this subsection may be used either by the States or directly by the Secretary in cooperation with the States for any purpose that the Secretary determines is appropriate to restore the fishery affected by such a failure or to prevent a similar failure in the future;

(2) the funds authorized to be appropriated under this subsection shall not be available to

the Secretary for use as grants for chartering fishing vessels; and

(3) the Federal share of the cost of any activity carried out with an amount appropriated under the authority of this subsection shall be 75 percent of the cost of that activity.

Amounts appropriated under this subsection shall remain available until expended.

(c) Development of management plans

In addition to the amounts authorized under subsections (a) and (b) of this section, there are authorized to be appropriated to the Department of Commerce \$350,000 for each of the fiscal years 1989, 1990, 1991, 1992, and 1993, and \$600,000 for each of the fiscal years 1994 and 1995, to support the efforts of the following interstate commissions to develop interstate fishery management plans for interjurisdictional fishery resources:

(1) The commission established by the Atlantic States Marine Fisheries Compact, as consented to and approved by Public Law 77-539 (56 Stat. 267), approved May 4, 1942.

(2) The commission established by the Pacific Marine Fisheries Compact, as consented to and approved by Public Law 80-232 (61 Stat. 419), approved July 24, 1947.

(3) The commission established by the Gulf States Marine Fisheries Compact, as consented to and approved by Public Law 81-66 (63 Stat. 70), approved May 19, 1949.

(d) Grants to commercial fishermen

(1) In addition to the amounts authorized under subsections (a), (b), and (c) of this section, there are authorized to be appropriated to the Department of Commerce \$65,000,000 for fiscal year 1992 to enable the Secretary to award grants to persons engaged in commercial fisheries, for uninsured losses determined by the Secretary to have been suffered as a direct result of a fishery resource disaster arising from Hurricane Hugo, Hurricane Andrew, Hurricane Iniki, or any other natural disaster. Amounts appropriated under this subsection shall remain available until expended.

(2) The Secretary shall determine the extent, and the beginning and ending dates, of any fishery resource disaster under this subsection.

(3) Eligibility for a grant under this subsection shall be limited to any person that has less than \$2,000,000 in gross revenues annually, as determined by the Secretary.

(4) A person may receive a grant under this subsection for up to 75 percent of any uninsured commercial fishery loss resulting from such a fishery resource disaster (to the extent that such losses have not been compensated by other Federal and State programs), but shall receive no more than \$100,000 in the aggregate for all such losses suffered as a result of any particular fishery resource disaster.

(5) The Secretary shall establish, after notice and opportunity for public comment, appropriate limitations, terms, and conditions for awarding grants under this subsection, including provisions specifying the means by which applicants must demonstrate claimed losses and limiting the aggregate amounts that may be paid to persons that are affiliated with each other or under common ownership.

(6) As used in this subsection, the term "person" means any individual or any corporation, partnership, trust, association, or other non-governmental entity.

(Pub. L. 99-659, title III, §308, Nov. 14, 1986, 100 Stat. 3736; Pub. L. 101-627, title V, §§502, 503, Nov. 28, 1990, 104 Stat. 4463; Pub. L. 102-396, title IX, §9135, Oct. 6, 1992, 106 Stat. 1937; Pub. L. 103-206, title VIII, §811, Dec. 20, 1993, 107 Stat. 2454; Pub. L. 103-238, §21, Apr. 30, 1994, 108 Stat. 561.)

REFERENCES IN TEXT

Public Law 77-539, referred to in subsec. (c)(1), is act May 4, 1942, ch. 283, 56 Stat. 267, which is not classified to the Code.

Public Law 80-232, referred to in subsec. (c)(2), is act July 24, 1947, ch. 316, 61 Stat. 419, which is not classified to the Code.

Public Law 81-66, referred to in subsec. (c)(3), is act May 19, 1949, ch. 128, 63 Stat. 70, which is not classified to the Code.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103-238 substituted "\$65,000,000 for each of the fiscal years 1994 and 1995" for "\$2,500,000 for each of the fiscal years 1989, 1990, 1991, 1992, 1993, 1994, and 1995".

1993—Subsec. (c). Pub. L. 103-206 inserted ", and \$600,000 for each of the fiscal years 1994 and 1995," after "and 1993".

1992—Subsec. (d). Pub. L. 102-396 added subsec. (d). 1990—Subsec. (a). Pub. L. 101-627, §503(1), substituted "the fiscal years 1989, 1990, 1991, 1992, 1993, 1994, and 1995" for "fiscal years 1987, 1988, and 1989".

Subsec. (b). Pub. L. 101-627, §§502, 503(2), in introductory provisions substituted "the fiscal years 1989, 1990, 1991, 1992, 1993, 1994, and 1995" for "fiscal years 1988 and 1989" and added par. (3).

Subsec. (c). Pub. L. 101-627, §503(3), substituted "the fiscal years 1989, 1990, 1991, 1992, and 1993" for "fiscal years 1988 and 1989".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1389, 4103, 4104 of this title.

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