§ 3955. Distribution of appropriations

(a) Priority project and conservation planning expenditures

Of the total amount appropriated during a given fiscal year to carry out this chapter, 70 percent shall be available until expended, for the purposes of making expenditures—

(1) not to exceed the aggregate amount of $5,000,000 annually to assist the Task Force in the preparation of the list required under this chapter and the plan required under this chapter, including preparation of—

(A) preliminary assessments;

(B) general or site-specific inventories;

(C) reconnaissance, engineering or other studies;

(D) preliminary design work; and

(E) such other studies as may be necessary to identify and evaluate the feasibility of coastal wetland restoration projects;

(2) to carry out coastal wetlands restoration projects in accordance with the priorities set forth on the list prepared under this chapter;

(3) to carry out coastal wetland restoration projects in accordance with the priorities set forth in the restoration plan prepared under this chapter;

(4) to make grants not to exceed $2,500,000 annually or $10,000,000 in total, to assist the agency designated by the State in development of the Coastal Wetlands Conservation Plan pursuant to this chapter.

(b) Coastal wetlands conservation grants

Of the total amount appropriated during a given fiscal year to carry out this chapter, 15 percent shall be available to the Director, for purposes of making grants—

(1) to any coastal State, except States eligible to receive funding under subsection (a) of this section, to carry out coastal wetlands conservation projects in accordance with section 3954 of this title; and

(2) in the amount of $2,500,000 in total for an assessment of the status, condition, and trends of wetlands in the State of Texas.

(c) North American wetlands conservation

Of the total amount appropriated during a given fiscal year to carry out this chapter, 15 percent shall be available to, and shall remain available until expended by, the Secretary of the Interior for allocation to carry out wetlands conservation projects in coastal wetlands ecosystems in any coastal State under section 4007 of this title.
§ 4002. Congressional statement of purpose

The purpose of this chapter is to—

(1) strengthen the competitive position of the United States commercial fishing industry in the domestic and international marketplace;

(2) encourage the development and utilization of all species of fish available for harvest by the United States fishing industry;

(3) encourage the utilization of domestically-produced fish through enhancement of markets, promotion, and public relations;

(4) help the United States fishing industry develop methods to improve quality and efficiency in the marketplace;

(5) educate and inform consumers on the use of fish;

(6) develop better coordination of fisheries marketing and promotion activities with commercial fisheries research and development programs; and

(7) educate and inform the public about the nutritional value of fish in the diet.


REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title," meaning title II of Pub. L. 99–659, Nov. 14, 1986, 100 Stat. 3715, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 4001 of this title and Tables.

§ 4003. Definitions

As used in this chapter, the term—

(1) "consumer education" means actions undertaken to inform consumers on matters related to the consumption of fish and fish products;

(2) "council" means a seafood promotional council established under section 4009 of this title;

(3) "fish" means finfish, mollusks, crustaceans, and all other forms of aquatic animal life used for human consumption; the term does not include marine mammals and seabirds;

(4) "Fund" means the Fisheries Promotional Fund established in section 4008 of this title;

(5) "harvester" means any individual who is in the business of catching or growing fish for purposes of sale;

(6) "importer" means any person in the business of importing fish or fish products into the United States from another country for commercial purposes or who acts as an agent, broker, or consignee for any person or nation that produces, processes or markets fish or fish products outside of the United States for sale or other commercial purpose in the United States;

(7) "marketer" means any person who is in the business of selling fish or fish products in the wholesale, retail, or restaurant trade, but whose primary business function is not the processing or packaging of fish or fish products in preparation for sale;

(8) "marketing and promotion" means an activity aimed at encouraging the consumption of fish or fish products or expanding or maintaining commercial markets for fish or fish products;

(9) "member" means any person serving on the National Council or on any council;

(10) "National Council" means the National Fish and Seafood Promotional Council established in section 4004 of this title;

(11) "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any private entity organized or existing under the laws of the United States or any State, commonwealth, territory or possession of the United States;

(12) "processor" means any person who is in the business of preparing or packaging fish or fish products (including fish of the processor's own harvesting) for sale;

(13) "receiver" means any person who owns fish processing vessels and any person in the business of acquiring fish directly from harvesters;

(14) "research" means any type of research designed to advance the image, desirability, usage, marketability, production or quality of fish and fish products;

(15) "sector" means—

(A) the sector consisting of harvesters;

(B) the sector consisting of importers;

(C) the sector consisting of marketers;

(D) the sector consisting of processors;

(E) the sector consisting of receivers; or

(F) the consumer sector consisting of persons professionally engaged in the dissemination of information pertaining to the nutritional benefits and preparation of fish and fish products;

(16) "Secretary" means the Secretary of Commerce, or the Secretary's designee; and

(17) "United States" means the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other territory, possession, or commonwealth of the United States.
§ 4004. Establishment of National Council

(a) Establishment

There is established the National Fish and Seafood Promotional Council.

(b) Composition

(1) The National Council shall be composed of the Secretary, who shall be a nonvoting member, and fifteen voting members appointed by the Secretary.

(2) Nominations for appointees shall be submitted in a manner prescribed by the Secretary.

(c) Regional representation


(d) Voting members

(1) The voting members of the National Council shall be—

(A) three members who reside in or do substantial fishing industry business in the Northeast region;

(B) three members who reside in or do substantial fishing industry business in the Southeast region;

(C) three members who reside in or do substantial fishing industry business in the Pacific region;

(D) three members who reside in or do substantial fishing industry business in the Alaska region;

(E) two members-at-large with demonstrated expertise in fresh-water and inland commercial fisheries, at least one of whom is not a resident of the States of the Alaska, Pacific, Southeast, and Northeast regions; and

(F) one member-at-large who is either a person professionally engaged in the dissemination of information pertaining to the nutritional benefits and preparation of fish and fish products or a person who is a member of an organized labor union and has expertise in the United States fisheries.

(2) Of the members appointed pursuant to each of paragraphs (1)(A) through (D) of this subsection, one shall be a harvester, one shall be a processor or a receiver, and one shall be a marketer.

(e) Term of office

Members of the National Council shall be appointed for a term of 4 years. A vacancy in the National Council shall not affect its ability to function. The Secretary shall appoint a new member within sixty days to fill a vacancy in an unexpired term. Any member may remain on the National Council beyond that member’s term until a successor is appointed.

(f) Chairman

The National Council shall annually elect a Chairman by a majority of those voting, if a quorum is present. Ten members of the National Council shall constitute a quorum, but a lesser number may hold hearings.

(g) First meeting

The National Council shall first meet within one hundred and eighty days after November 14, 1986.

(h) Compensation of members

Members of the National Council shall serve without compensation, but shall be reimbursed in accordance with section 5703 of title 5 for reasonable travel costs and expenses incurred in performing their duties as members of the National Council.

AMENDMENTS

1988—Subsec. (d)(1)(E). Pub. L. 100–350 which directed the substitution of ‘‘, at least one of whom is not a resident of the States of the Alaska, Pacific, Southeast, and Northeast regions’’ for ‘‘and who are not residents of the States of the Alaska, Pacific, Southeast, or Northeast regions’’ was executed by substituting that phrase for ‘‘and who are not residents of the States of the Alaska, Pacific, Southeast, or Northeast regions’’. 1990—Subtitle C of title VII, §704(a), (b), Nov. 28, 1990, 104 Stat. 4464, provided that:

‘‘(a) UNINTERRUPTED SERVICE.—Individuals serving on September 30, 1990, as members of the National Fish and Seafood Promotional Council shall be deemed to continue as members in uninterrupted service since the date of their initial appointment.

(b) FILLING OF VACANCIES.—Notwithstanding section 309(e) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4005(e)), any vacancy on the National Fish and Seafood Promotion Act [Promotional Council] not filled as of September 30, 1990, shall be filled within 60 days after the date of enactment of this Act [Nov. 28, 1990].’’

§ 4005. Functions and duties of National Council

(a) Functions and duties

The National Council shall—

(1) prepare and submit to the Secretary, for the Secretary’s review and approval, an annual marketing and promotion plan which contains descriptions of consumer education, research, and other marketing and promotion activities of the National Council for the following year, including plans to coordinate the activities of councils established under section 4009 of this title;

(2) prepare and submit to the Secretary, for the Secretary’s review and approval, an annual budget of the anticipated expenses and disbursements of the National Council, including probable costs of consumer education, re-
search, and other marketing and promotion plans or projects, and referenda under section 4009 of this title;
(3) maintain accounting records of the receipt and disbursement of all funds entrusted to the National Council, subject to the Secretary’s right to review or inspect such records;
(4) maintain such books and records as the Secretary determines appropriate; and
(5) prepare and submit to the Secretary from time to time such reports or proposals as the Secretary or the National Council determines appropriate for furthering the purposes and policies of this chapter.

(b) Annual plan

Each annual marketing and promotion plan shall be directed to:
(1) increasing the general demand for fish and fish products;
(2) encouraging, expanding, or improving the marketing and promotion and utilization of fish and fish products; and
(3) improving the dissemination of data collected by consumer education, research, and other marketing promotion activities.

(c) Prohibition on certain references

Consumer education and other marketing and promotion activities of the National Council shall contain no reference to a private brand or trade name and shall avoid use of deceptive acts or practices in behalf of fish or fish products or with respect to the quality, value, or use of any competing product or group of products. In addition, the National Council may not promote the consumption or purchase of a single or group of similar fish species (such as members of the same genera); except that the Council may use illustrations of a single or group of similar fish species in the course of promoting the generic consumption of fish and fish products.

(d) Executive director

The National Council may employ and determine the salary of an executive director, but such salary shall not exceed Senior Executive Service Level 6. The executive director shall have demonstrated expertise in the marketing and promotion of food products and may, with respect to the provisions of section 4009 of this title, with the approval of the National Council, select and employ additional staff as necessary.

(e) Funding of referendum

The National Council may enter into agreements with applicants proposing to establish a council under section 4009 of this title for the purpose of funding a referendum establishing the council. The National Council may enter into agreements with the councils established under section 4009 of this title for the purpose of funding a referendum to establish quality standards, or a referendum to terminate any such council.

(f) Agreements

The National Council may enter into agreements to develop and carry out activities authorized under this chapter.

(g) Termination of National Council

The National Council shall cease to exist on December 31, 1991.

§ 4006. Duties of Secretary with regard to National Council

(a) Duties of Secretary

The Secretary shall—
(1) within sixty days after its submission by the National Council, review the annual marketing and promotion plan and budget and, if the Secretary determines that such plan and budget are in accordance with the purposes and policies of this chapter, approve such plan and budget;
(2) administer the Fund and, in accordance with subsection (b) of this section, withdraw from the Fund such sums as are necessary to carry out the National Council’s approved marketing and promotion plan and budget;
(3) promulgate regulations necessary to carry out the purposes and policies of this chapter;
(4) provide such administrative assistance as the National Council may require for purposes of its initial organization and operation; and
(5) make all initial appointments to the National Council within ninety days after November 14, 1986.

(b) Withdrawal of funds

The Secretary shall make withdrawals of sums from the Fund under this section at the request of the National Council, unless the Secretary determines that the purposes for which such sums are requested are not reasonably likely to further the purposes and policies of this chapter.

§ 4007. Voluntary payments

Any person may make voluntary payments to assist the National Council to carry out its annual marketing and promotion plan and annual budget. The Secretary shall deposit such payments into the Fund.
§ 4008. Establishment of Fisheries Promotional Fund

(a) Establishment of Fund

There is established in the Treasury of the United States a Fisheries Promotional Fund. The Fund shall be available, to the extent provided for in appropriation Acts, for the purpose of making payments to carry out the annual marketing and promotion plan and annual budget of the National Council under this chapter.

(b) Deposits

There shall be deposited in the Fund—

(1) the moneys transferred to the Fund under section 713c-3(b)(2) of title 15;
(2) payments made voluntarily pursuant to section 4007 of this title; and
(3) receipts from investments made under subsection (c) of this section.

(c) Deposits and investments

Sums in the Fund that are not currently needed for the purposes of the Fund shall be kept on deposit in an appropriate interest-bearing accounts that shall be established by the Secretary of the Treasury, or invested in obligations of, or guaranteed by, the United States. Any revenue accruing from such deposits and investments shall be deposited in the Fund.

(d) Authorization

There are authorized to be appropriated from the Fund, for the purposes of carrying out the annual marketing and promotion plan and annual budget of the National Council under this chapter, such sums as are deposited in the Fund under subsection (b) of this section in each fiscal year beginning in fiscal year 1987 through fiscal year 1991.


CODIFICATION


AMENDMENTS


§ 4009. Establishment of seafood marketing councils

(a) Application

An application for a charter for a seafood marketing council for one or more species of fish and fish products of that species may be filed by persons who meet the requirements specified in accordance with subsection (b)(6) of this section.

(b) Form of application

An application for a charter for a council shall be made by filing with the Secretary the text of a proposed charter in such form as shall be prescribed by regulation by the Secretary. The text of a proposed charter must contain such information as the Secretary considers necessary or appropriate for carrying out the provisions of this chapter, including—

(1) the name of the council and a provision proclaiming its establishment;
(2) a declaration of the purposes and objectives of the council;
(3) a description of the species of fish and fish products for which the council will implement marketing and promotion plans under section 4010 of this title;
(4) the identification of each sector and the number and terms of representatives of each sector that will be represented as voting members of the council;
(5) the identification of those sectors (including the sector consisting of harvesters, the sector consisting of receivers, and, if subject to assessment, the sector consisting of importers) subject to a referendum to establish a council under subsection (e) of this section;
(6) a specification for each sector described under paragraph (5) of this subsection of the minimum requirements, as measured by income, volume, or other relevant factors, that a person engaging in business in the sector must meet in order to participate in a referendum;
(7)(A) a description of the procedures for determining assessment rates under section 4012 of this title;
(B) the proposed rate or rates that will be imposed by the council on receivers and, if subject to assessment, importers during its first year of operation;
(C) the maximum amount an assessment rate for any period may be raised above the rate applicable for the immediately preceding period; and
(D) the maximum rate or rates that can be imposed by a council on receivers or importers during the operation of the council;
(8) a provision setting forth the definition of a quorum for making decisions on council business and the procedures for selecting a chairman of the council;
(9) a provision setting forth the voting procedures by which votes may be cast by proxy; and
(10) such other provisions relating to administration of the council as the Secretary considers necessary.

The text of a proposed charter shall be accompanied by a document identifying, to the extent practicable by address of place of business, the persons (hereinafter referred to as “sector participants”) that are considered by the applicants to meet the requirements specified in paragraph (6) of this subsection. The text of a proposed charter shall include provisions setting forth procedures for providing refunds to those sector participants subject to assessment under section 4012 of this title, and may also include provisions which establish a maximum limit on the amount that any one sector participant may be required to pay under an assessment for any period.

(c) Contents of charter

The Secretary may not approve a proposed charter filed under subsection (a) of this section unless such charter provides that—

(1) the council will have voting members representing the harvesting, receiving and, if subject to assessment, importing sectors; and
(2) the members of the council shall serve without compensation, but shall be reimbursed for their reasonable expenses incurred in performing their duties as members of the council.

(d) Review of charter

(1) Within 180 days of the receipt of an application to establish a council, the Secretary shall—

(A) identify, to the extent practicable, those sector participants that meet the requirements for eligibility to participate in the referendum under subsection (e) of this section;

(B) determine, to the extent practicable, if the charter is accompanied by a petition comprised of the signatures or corporate certifications, as the case may be, of no less than three sector participants in each sector identified in accordance with subsection (b)(5) of this section who collectively accounted for, in the twelve-month period immediately preceding the month in which the application was filed, not less than 10 percent of the value of the fish or fish products described in accordance with subsection (b)(3) of this section that were handled by each such sector during that period; and

(C) determine if the proposed charter is consistent with the provisions of this chapter and any other applicable law.

(2) If any negative determination is made under paragraph (1) of this subsection regarding a proposed charter, the Secretary shall advise in writing the sector participants who made the application of the reasons for such determination. A corrected application may be submitted thereafter to the Secretary for approval.

(e) Conduct of referendum

(1) Upon making affirmative determinations under subsection (d)(1) of this section regarding a proposed charter, the Secretary, within 90 days after the date of the last of such determinations, shall conduct a referendum on the adoption of the proposed charter among all sector participants identified in accordance with subsection (d)(1)(A) of this section. The Secretary shall by order establish the council and approve the proposed charter, if the referendum votes which are cast in favor of the proposed charter constitute a majority of the sector participants voting in each sector and the majority collectively accounts for, in the twelve-month period immediately preceding the month in which the application was filed, at least sixty-six percent of the value of the fish and fish products described in accordance with subsection (a) of this section, at least sixty-six percent of the value of the fish or fish products described in accordance with subsection (b)(3) of this section that were handled by each such sector during that period.

(2) Not less than thirty days prior to holding a referendum under this subsection, the Secretary shall—

(A) publish (by such means as will result in wide publicity in regions affected by the proposed charter) the text of the proposed charter and a list of those sector participants eligible to vote in the referendum; and

(B) provide for public comment, including the opportunity for a public meeting.

(3)(A) The Secretary shall pay all costs of a referendum which establishes a council under this subsection. Within two years after a council is established the council shall reimburse the Secretary for any expenses incurred for the conduct of the referendum from assessments collected by the council. Prior to the holding of a referendum under this subsection, the Secretary shall require the applicants to post a bond or other security acceptable to the Secretary, in an amount which the Secretary determines to be sufficient to pay any expenses incurred for the conduct of the referendum, and shall immediately recover such amount if a referendum fails to result in the establishment of a council.

(B) As used in this paragraph, the term "expenses incurred for the conduct of the referendum" does not include salaries of Government employees or other administrative overhead, but is limited to those additional direct costs incurred in connection with conduct of the referendum.

(f) Nominations

(1) Within thirty days after a council is established under subsection (e) of this section, the Secretary shall solicit from the sectors represented on the council nominations for members of the council. If the harvesters and receivers represented on the council are engaged in business in two or more regions of the United States, the nominations made under this paragraph, and the appointments to the council made under paragraph (3) of this subsection, must, to the extent practicable, result in equitable representation for the constituent regions.

(2) No person is eligible for nomination or appointment as a member of a council unless such person is knowledgeable and experienced with regard to the activities of, and is or has been actively engaged in the business of, the sector which such person will represent on the council.

(3) The Secretary shall, within sixty days after the end of the thirty-day period referred to in paragraph (1) of this subsection, appoint the members of the council from among the nominees.

(4) A vacancy on a council shall be filled, within sixty days after the vacancy occurs, in the same manner in which the original appointment was made. A member appointed to fill a vacancy occurring before the expiration of the term for which the member’s predecessor was appointed shall be appointed only for the remainder of such term.

(5) The Secretary shall remove any member of a council if the council concerned first recommends, by not less than two-thirds of its members, removal for cause. Such a recommendation of a council must be in writing and accompanied by a statement of the reasons upon which the recommendation is based.

(g) Nature of a council

A council is not an instrumentality of the United States Government.

§ 4010. Functions and powers of councils

(a) Activities of a council

(1) Each council shall—
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(A) Adopt a seal which shall be judicially noticed;
(B) implement all terms of its charter;
(C) prepare and submit to the Secretary, for review and approval under section 4011(a)(1) of this title, a marketing and promotion plan and amendments to such plan which contain descriptions of the projected consumer education, research, and other marketing and promotion activities of the council;
(D) implement and administer an approved marketing and promotion plan and amendments to such plan;
(E) determine the assessments to be made under section 4012 of this title and administer the collection of such assessments to finance council expenses described in paragraph (2) of this subsection;
(F) receive, investigate and report to the Secretary accounts of violations of rules or orders relating to assessments collected under section 4012 of this title, or quality standard requirements established under subsection (c) of this section;
(G) prepare and submit to the Secretary, for review and approval under section 4011(a)(1) of this title, a budget (on a fiscal year basis) of the anticipated expenses and disbursements of the council, including—
(i) all administrative and contractual expenses;
(ii) the probable costs of consumer education, research, and other marketing and promotion plans or projects;
(iii) the costs of the collection of assessments; and
(iv) the expense of repayment of the costs of each referendum conducted in regard to the council;
(H) maintain books and records, prepare and submit to the Secretary such reports from time to time as may be necessary for appropriate accounting with respect to the receipt and disbursement of funds entrusted to it, and cause a complete audit report to be submitted to the Secretary at the end of each fiscal year;
(I) reimburse the Secretary for the expenses incurred for the conduct of the referendum to establish the council or any subsequent referendum to terminate the council that fails; and
(J) prepare and submit to the Secretary from time to time such reports or proposals as the council determines appropriate to further the purposes of this chapter.

(2) Funds collected by a council under section 4012 of this title shall be used by the council for—

(A) research, consumer education, and other marketing and promotion activities regarding the quality and marketing of fish and fish products;
(B) other expenses, as described in subsection (a)(1)(G) of this section;
(C) such other expenses for the administration, maintenance, and functioning of the council as may be authorized by the Secretary;

(D) any reserve fund established under subsection (b)(5) of this section and any administrative expenses incurred by the Secretary specified as reimbursable under this chapter.

(3) Marketing and promotion plans and amendments to such plans prepared by a council under subsection (a)(1)(C) of this section shall be designed to increase the general demand for fish and fish products described in accordance with section 4009(b)(3) of this title by encouraging, expanding, and improving the marketing, promotion and utilization of such fish and fish products, in domestic or foreign markets, or both, through consumer education, research, and other marketing and promotion activities.

(4) Consumer education and other marketing and promotion activities carried out by a council under a marketing and promotion plan and amendments to such plan may not contain references to any private brand or trade name and shall avoid the use of deceptive acts or practices, if the first approved, in a referendum conducted by the council if first approved, in a referendum conducted by the council, by a majority of the sector participants of the sector concerned voting collectively accounted for, in the twelve-month period immediately preceding the month in which the referendum is held, not less than sixty-six percent of the value of the fish or fish products described in accordance

1 So in original. Probably should not be capitalized.
with section 4009(b)(3) of this title that were
handled by that sector during such period.
(3) With respect to a quality standard adopted
under paragraph (2) of this subsection, the coun-
cil shall develop and file with the Secretary an
official identification in the form of a symbol,
stamp, label, or seal that will be used to indi-
cate that a fish or fish product meets the qual-
ity standard at the time the official identifica-
tion is affixed to the fish or fish product, or is
affixed to or printed on the packaging material
of the fish or fish product.
(4) The Secretary shall establish by regulation
procedures for the use of an official identifica-
tion filed with the Secretary under paragraph (3)
of this subsection. Misuse of an official identi-
fication established under this section shall con-
stitute a violation of this chapter.
(5) Prior to issuing final regulations under
paragraph (4) of this subsection, the Secretary
shall—
(A) publish the proposed regulations by such
means as will result in wide publicity in af-
fected regions; and
(B) provide for public comment and the op-
tportunity for a public hearing.
(6) A council may receive, investigate and re-
port to the Secretary accounts of violations of
regulations issued under paragraph (4) of this
subsection.
(7) Any regulation issued under paragraph (4)
of this subsection shall be repealed immediately
by the Secretary upon the termination under
section 4015 of this title of the council that de-
veloped the official identification to which the
regulations apply.
(8) The procedures applicable to the adoption
and the taking effect of a quality standard de-
developed under this subsection also apply to a
subsequent amendment or the termination of
such standard.
(d) Amendment of a charter
A council may submit to the Secretary
amendments to the text of the council’s charter.
Any proposed amendments to a charter shall be
approved or disapproved in the same manner as
the original charter was approved under section
4009(d) and (e) of this title, with the exception of
section 4009(d)(1)(B) of this title.

§ 4011. Functions and powers of Secretary
(a) Duties of the Secretary
In addition to the duties prescribed under sec-
section 4009 of this title, the Secretary shall—
(1) review, for consistency with the provi-
sions of this chapter and other applicable law,
and approve or disapprove, marketing and pro-
motion plans and budgets within sixty days
after their submission by a council;
(2) immediately notify a council in writing
of the disapproval of a marketing and pro-
motion plan or budget, together with reasons
for such disapproval;
(3) issue orders and amendments to such or-
ders that are necessary to implement quality
standards under section 4010(c) of this title;
(4) promulgate regulations necessary to
carry out the purposes of this chapter;
(5) enforce the provisions of this chapter, as
provided under section 4016 of this title; and
(6) make all appointments to councils in ac-
cordance with section 4009(f) of this title.
(b) Assistance
The Secretary may provide, on a reimbursable
or other basis, such administrative or technical
assistance as a council may request for purposes
of the initial organization and subsequent oper-
ation of the council.

§ 4012. Assessments
(a) Authority
A council shall impose and administer the col-
lection of the assessments that are necessary to
pay for all expenses incurred by the council in
carrying out its functions under this chapter.
(b) Method of imposition
(1) Assessments shall be imposed on sector
participants in the receiving sector or the im-
porting sector, or both, as specified in an ap-
proved council charter.
(2) An assessment on sector participants in the
receiving sector shall be—
(A) except for an owner of a fish processing
vessel, in the form of a percentage of the value
of the fish described in accordance with sec-
tion 4009(b)(3) of this title when purchased by
such participants from fish harvesters; and
(B) for an owner of a fish processing vessel,
in the form of a percentage of the value of the
fish described in accordance with section
4009(b)(3) of this title and harvested by such a
vessel that is no less than the value of such
fish, if such fish had been purchased by a re-
ceiver other than an owner of such a vessel.
(3) An assessment on sector participants in the
importing sector shall be in the form of a per-
centage of the value, as determined for the pur-
poses of the customs laws, of the fish or fish
products described in accordance with section
4009(b)(3) of this title when entered, or with-
drawn from warehouse for consumption, in the
customs territory of the United States by such
sector participants.
(c) Prohibition on assessment
A council may not impose an assessment on
any person that was not eligible to vote in the
referendum establishing the council under sec-
tion 4009(e) of this title by reason of failure to
meet the requirements specified under section
4009(b)(6) of this title, unless such person, after
the date on which such referendum is held, meets the requirements of section 4009(b)(6) of
this title.
(d) Voluntary payments
Any person may make voluntary payments or
in-kind contributions to a council for purposes
of assisting the council in carrying out its func-
tions.
(e) Deposit of funds
All funds collected or received by a council
under this section shall be deposited by the
council in an appropriate account in the name of
the council specified in its charter. Funds eligible to be collected or received by a council shall be limited to those authorized under this section.

(f) Information

(1) Sector participants shall make available to the Secretary such information and data as is necessary for the effectuation, administration or enforcement of this chapter or any order or regulation issued pursuant to this chapter. Except as provided in paragraphs (2) and (3) of this subsection, any information obtained in carrying out this subsection shall be kept confidential by all officers and employees of the Department of Commerce, independent accountants and other persons who have access to such information.

(2) If the Secretary or an employee of the United States Government is a party to a suit or administrative action involving an assessment, order, or regulation issued under this chapter, the Secretary may disclose information obtained under paragraph (1) of this subsection to the extent allowed by the judicial or administrative officer presiding over such suit or action.

(3) This subsection shall not prohibit—

(A) the issuance of general or statistical statements based upon reports of a number of persons subject to the provisions of this chapter which do not identify the information furnished by any person; or

(B) the publication by direction of the Secretary of the name of any person violating a requirement violated by such person.

(4) Any individual who is required to keep information confidential under this subsection and who knowingly violates this subsection shall, upon conviction, be—

(A) subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or both; and

(B) removed from office if an officer or employee of a council or the Department of Commerce.


§ 4013. Petitions

(a) Filing of petition

Any person subject to assessment under section 4012 of this title may file a written petition with the Secretary alleging that—

(1) the assessment;

(2) the plan approved under section 4011(a)(1) of this title on which the assessment is based, or

(3) any obligation imposed under the plan, is not in accordance with law and requesting the Secretary to modify or take other appropriate action regarding the assessment or plan.

(b) Form of petition

Any such petition shall be in writing and filed within the period prescribed by the Secretary. A person who files a petition under this section shall be given an opportunity for a hearing regarding the petition in accordance with regulations issued by the Secretary. After such a hearing, or if no hearing is requested, after consideration of all documentation and other evidence, the Secretary shall make a ruling upon such petition.


§ 4014. Refunds

Notwithstanding any other provision of this chapter, any person who pays an assessment under this chapter may demand and shall promptly receive from the council a refund of such assessment. A demand for refund must be made in accordance with the procedures, and within such time, as shall be prescribed by the council and approved by the Secretary. Procedures to provide such a refund shall be established before any such assessment may be collected. Such procedures shall allow any person to request a refund for not less than ninety days from such collection, and provide that any such refund shall be made within sixty days after demand for such refund is made.


§ 4015. Termination of a council

(a) Petition for termination

(1) A petition to terminate a council may be filed with the Secretary by no less than three sector participants in any one sector. Any petition filed under this subsection shall be accompanied by a written document explaining the reasons for such petition.

(2) If the Secretary determines that a petition filed under paragraph (1) of this subsection is accompanied by the signatures, or corporate certifications, as the case may be, of no less than three sector participants in a sector referred to in paragraph (1) of this subsection who collectively accounted for, in the twelve-month period immediately preceding the month in which such petition was filed, not less than 20 percent of the value of the fish or fish products described in accordance with section 4009(b)(3) of this title that were handled by that sector during such period, the Secretary, within 90 days after such determination, shall conduct a referendum for termination of the council among all sector participants in that sector.

(3) Not less than 30 days prior to holding a referendum under this subsection, the Secretary shall publish a notice of such referendum, including the document explaining the reasons for the petition filed under paragraph (1) of this subsection and any other relevant information the Secretary considers appropriate.

(4) If the referendum votes which are cast in favor of terminating the council constitute a majority of the sector participants voting and the majority, in the period referred to in paragraph (2) of this subsection, collectively accounted for not less than sixty-six percent of the value of such fish and fish products that were handled during such period by a sector referred
to in paragraph (1) of this subsection, the Secretary shall by order terminate the council effective as of a date by which the affairs of the council may be concluded on an orderly basis.

(5) The Secretary initially shall pay all costs of a referendum conducted under this subsection. Prior to conducting such a referendum, the Secretary shall require petitioners to post a bond or other security acceptable to the Secretary in an amount which the Secretary determines to be sufficient to pay any expenses incurred for the conduct of such referendum.

(6)(A) If a referendum conducted under this subsection fails to result in the termination of the council, the Secretary shall immediately recover the amount of the bond posted by petitioners under paragraph (5) of this subsection.

(B) If a referendum conducted under this subsection results in the termination of the council, the Secretary shall recover the expenses incurred for the conduct of the referendum from the account established by the council under section 4012(e) of this title. If the amount remaining in such account is insufficient for the Secretary to recover all expenses incurred for the conduct of the referendum, the Secretary shall recover the balance of such expenses from the petitioners that posted a bond under paragraph (5) of this subsection.

(b) Payment of remaining funds

If a council is terminated under subsection (a) of this section, the Secretary, after recovering all expenses incurred for the conduct of the referendum under subsection (a) of this section, shall take such action as is necessary and practicable to ensure that moneys remaining in the account established by the council under section 4012(e) of this title are paid on a prorated basis to the sector participants from whom those moneys were collected under section 4012 of this title.

(2) (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.

(3)(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.

(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.

(3)(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.

(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.
§ 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.


CHAPTER 61—INTERJURISDICTIONAL FISHERIES

§ 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;
2. to promote and encourage management of interjurisdictional fishery resources throughout their range; and
3. to promote and encourage research in preparation for the implementation of the use of ecosystems and interspecies approaches to the conservation and management of interjurisdictional fishery resources throughout their range.


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.

AMENDMENTS


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 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] may be cited as the 'Interjurisdictional Fisheries Act of 1986'."

§ 4102. Definitions

For the purposes of this chapter:

1. The term "Federal fishery management plan" means a plan developed under the Magnuson-Stevens 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 Common-