

pertinent biographical data) of not less than three such individuals for each applicable vacancy, and that “qualified individual” meant an individual knowledgeable or experienced with regard to the management, conservation, or recreational or commercial harvest, of the fishery resources of the geographical area concerned.

Subsec. (b)(2) to (5). Pub. L. 97-453, §5(2)(B)-(E), added pars. (2) and (5), redesignated existing pars. (2) and (3) as (3) and (4), respectively, and in par. (3), as redesignated, substituted “by the Secretary in accordance with subsection (b)(2) of this section” for “pursuant to paragraph (1)(C)” after “appointed to a Council”.

Subsec. (f)(6). Pub. L. 97-453, §5(3), inserted requirement that the procedures of a Council and associated committees and panels be consistent with the procedural guidelines set forth in subsec. (i)(2).

Subsec. (h)(1). Pub. L. 97-453, §5(4)(A), inserted “that requires conservation and management” after “authority”.

Subsec. (h)(2). Pub. L. 97-453, §5(4)(B), substituted “section 1824(b)(4)(C)” for “section 1824(b)(4)(B)”.

Subsec. (h)(3). Pub. L. 97-453, §5(4)(C), inserted parenthetical definition of “geographical area concerned”.

Subsec. (h)(4). Pub. L. 97-453, §5(4)(D), struck out subpar. (A) which provided for a report, before Feb. 1 of each year, on the Council’s activities during the immediately preceding calendar year, and struck out the subparagraph designators before subpars. (B) and (C).

Subsec. (i). Pub. L. 97-453, §5(5), added subsec. (i).

1980—Subsec. (d). Pub. L. 96-561 inserted provision that other nonvoting members may be reimbursed for actual expenses.

1978—Subsec. (h)(5). Pub. L. 95-354 inserted provisions relating to capacity and extent to which United States fish processors will process harvested fish.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Committee on Resources of House of Representatives changed to Committee on Natural Resources of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-659, title I, §104(a)(2), Nov. 14, 1986, 100 Stat. 3709, provided that: “The amendments made by paragraph (1) [amending this section] shall apply with respect to voting members of regional fishery management councils who are appointed, and to individuals who are nominated for appointment as voting members, on or after the date of the enactment of this Act [Nov. 14, 1986].”

TRANSFER OF FUNCTIONS

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

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. Committee on Merchant Marine and Fisheries of House of Representatives treated as referring to Committee on Resources of House of Representatives in case of provisions relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography by section 1(b)(3) of

Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Resources of House of Representatives changed to Committee on Natural Resources of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

OTHER FISHERIES

Pub. L. 115-405, §102(c), Dec. 31, 2018, 132 Stat. 5357, provided that: “Nothing in paragraph (8) of section 302(h) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(h)), as added by subsection (a), shall be construed to affect management of any fishery not described in such paragraph (8).”

DISCLOSURE OF FINANCIAL INTEREST BY INCUMBENT VOTING MEMBERS AND EXECUTIVE DIRECTORS

Pub. L. 99-659, title I, §104(e)(2), Nov. 14, 1986, 100 Stat. 3711, provided that for purposes of applying subsec. (k) of this section to voting members and executive directors of regional fishery management councils who were serving in those capacities on date on which regulations prescribed to carry out subsec. (k) first took effect, each such member or director must file a disclosure form under subsec. (k) within 45 days after that date.

DIRECTIONS REGARDING FISHERY MANAGEMENT COUNCIL MEMBERSHIP

Pub. L. 99-659, title I, §113, Nov. 14, 1986, 100 Stat. 3715, provided that: “Notwithstanding section 302 of the Act (16 U.S.C. 1852) and effective on and after the date of the enactment of this Act [Nov. 14, 1986], the Secretary shall take action to ensure, to the extent practicable, that those persons dependent for their livelihood upon the fisheries within the respective jurisdictions of the Regional Fishery Management Councils are fairly represented as voting members of the Councils.”

§ 1853. Contents of fishery management plans

(a) Required provisions

Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are—

(A) necessary and appropriate for the conservation and management of the fishery, to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery;

(B) described in this subsection or subsection (b), or both; and

(C) consistent with the national standards, the other provisions of this chapter, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interests in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;

(4) assess and specify—

(A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3),

(B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing, and

(C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;

(5) specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational,¹ charter fishing, and fish processing in the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, economic information necessary to meet the requirements of this chapter, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors,²

(6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;

(7) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 1855(b)(1)(A) of this title, minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat;

(8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 1854(a) of this title (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan;

(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and analyze the likely effects, if any, including the cumulative conservation, economic, and social impacts, of

the conservation and management measures on, and possible mitigation measures for—

(A) participants in the fisheries and fishing communities affected by the plan or amendment;

(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants; and

(C) the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants in the fishery;

(10) specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery;

(11) establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority—

(A) minimize bycatch; and

(B) minimize the mortality of bycatch which cannot be avoided;

(12) assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;

(13) include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery, including its economic impact, and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors;

(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate, taking into consideration the economic impact of the harvest restrictions or recovery benefits on the fishery participants in each sector, any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery and;³

(15) establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.

¹ So in original. Probably should be followed by "and".

² So in original. The comma probably should be a semicolon.

³ So in original. Probably should be "fishery; and".

(b) Discretionary provisions

Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may—

(1) require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to—

(A) any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone or for anadromous species or Continental Shelf fishery resources beyond such zone;

(B) the operator of any such vessel; or

(C) any United States fish processor who first receives fish that are subject to the plan;

(2)(A) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(B) designate such zones in areas where deep sea corals are identified under section 1884 of this title, to protect deep sea corals from physical damage from fishing gear or to prevent loss or damage to such fishing gear from interactions with deep sea corals, after considering long-term sustainable uses of fishery resources in such areas; and

(C) with respect to any closure of an area under this chapter that prohibits all fishing, ensure that such closure—

(i) is based on the best scientific information available;

(ii) includes criteria to assess the conservation benefit of the closed area;

(iii) establishes a timetable for review of the closed area's performance that is consistent with the purposes of the closed area; and

(iv) is based on an assessment of the benefits and impacts of the closure, including its size, in relation to other management measures (either alone or in combination with such measures), including the benefits and impacts of limiting access to: users of the area, overall fishing activity, fishery science, and fishery and marine conservation;

(3) establish specified limitations which are necessary and appropriate for the conservation and management of the fishery on the—

(A) catch of fish (based on area, species, size, number, weight, sex, bycatch, total biomass, or other factors);

(B) sale of fish caught during commercial, recreational, or charter fishing, consistent with any applicable Federal and State safety and quality requirements; and

(C) transshipment or transportation of fish or fish products under permits issued pursuant to section 1824 of this title;

(4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this chapter;

(5) incorporate (consistent with the national standards, the other provisions of this chapter,

and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery and take into account the different circumstances affecting fisheries from different States and ports, including distances to fishing grounds and proximity to time and area closures;

(6) establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account—

(A) present participation in the fishery;

(B) historical fishing practices in, and dependence on, the fishery;

(C) the economics of the fishery;

(D) the capability of fishing vessels used in the fishery to engage in other fisheries;

(E) the cultural and social framework relevant to the fishery and any affected fishing communities;

(F) the fair and equitable distribution of access privileges in the fishery; and

(G) any other relevant considerations;

(7) require fish processors who first receive fish that are subject to the plan to submit data which are necessary for the conservation and management of the fishery;

(8) require that one or more observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if the facilities of the vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized;

(9) assess and specify the effect which the conservation and management measures of the plan will have on the stocks of naturally spawning anadromous fish in the region;

(10) include, consistent with the other provisions of this chapter, conservation and management measures that provide harvest incentives for participants within each gear group to employ fishing practices that result in lower levels of bycatch or in lower levels of the mortality of bycatch;

(11) reserve a portion of the allowable biological catch of the fishery for use in scientific research;

(12) include management measures in the plan to conserve target and non-target species and habitats, considering the variety of ecological factors affecting fishery populations; and

(14)⁴ prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

(c) Proposed regulations

Proposed regulations which the Council deems necessary or appropriate for the purposes of—

⁴ So in original. No par. (13) has been enacted.

(1) implementing a fishery management plan or plan amendment shall be submitted to the Secretary simultaneously with the plan or amendment under section 1854 of this title; and

(2) making modifications to regulations implementing a fishery management plan or plan amendment may be submitted to the Secretary at any time after the plan or amendment is approved under section 1854 of this title.

(Pub. L. 94-265, title III, §303, Apr. 13, 1976, 90 Stat. 351; Pub. L. 95-354, §5(2), (3), Aug. 28, 1978, 92 Stat. 521; Pub. L. 97-453, §6, Jan. 12, 1983, 96 Stat. 2486; Pub. L. 99-659, title I, §§101(c)(2), 105(a)(1), (b), Nov. 14, 1986, 100 Stat. 3707, 3711; Pub. L. 101-627, title I, §109, Nov. 28, 1990, 104 Stat. 4447; Pub. L. 102-251, title III, §301(g), Mar. 9, 1992, 106 Stat. 64; Pub. L. 104-297, title I, §108(a), (c)-(e), Oct. 11, 1996, 110 Stat. 3574-3576; Pub. L. 106-554, §1(a)(4) [div. B, title I, §144(a)(1), (2)], Dec. 21, 2000, 114 Stat. 2763, 2763A-238; Pub. L. 109-479, title I, §§101(b), 104(a), 105, 106(a)(1), Jan. 12, 2007, 120 Stat. 3579, 3584-3586.)

AMENDMENT OF SUBSECTION (b)(1)(A)

Pub. L. 102-251, title III, §§301(g), 308, Mar. 9, 1992, 106 Stat. 64, 66, provided that, effective on the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States, with authority to prescribe implementing regulations effective Mar. 9, 1992, but with no such regulation to be effective until the date on which the Agreement enters into force for the United States, subsection (b)(1)(A) is amended by inserting "or special areas," after "exclusive economic zone" and "or areas" after "such zone".

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsections. (a)(1)(C), (5) and (b)(2)(C), (4), (5), (10), was in the original "this Act", meaning Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, known as the Magnuson-Stevens Fishery Conservation and Management Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

AMENDMENTS

2007—Subsec. (a)(5). Pub. L. 109-479, §104(a)(1), (2), substituted "charter fishing, and fish processing" for "and charter fishing" and inserted "economic information necessary to meet the requirements of this chapter," after "number of hauls,".

Subsec. (a)(9). Pub. L. 109-479, §101(b), in introductory provisions, substituted "analyze the likely effects, if any, including the cumulative conservation, economic, and social impacts, of the conservation and management measures on, and possible mitigation measures for—" for "describe the likely effects, if any, of the conservation and management measures on—".

Subsec. (a)(9)(C). Pub. L. 109-479, §104(a)(3)-(5), added subpar. (C).

Subsec. (a)(13). Pub. L. 109-479, §104(a)(6), (7), substituted "in the fishery, including its economic impact," for "in the fishery" and struck out "and" after semicolon at end.

Subsec. (a)(14). Pub. L. 109-479, §104(a)(8), (9), substituted "allocate, taking into consideration the eco-

nomic impact of the harvest restrictions or recovery benefits on the fishery participants in each sector," for "allocate" and "fishery and;" for "fishery."

Subsec. (a)(15). Pub. L. 109-479, §104(a)(10), added par. (15).

Subsec. (b)(2). Pub. L. 109-479, §105(1), (2), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (b)(5). Pub. L. 109-479, §105(3), substituted "fishery and take into account the different circumstances affecting fisheries from different States and ports, including distances to fishing grounds and proximity to time and area closures;" for "fishery;".

Subsec. (b)(6). Pub. L. 109-479, §105(4), added par. (6) and struck out former par. (6) which read as follows: "establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account—

"(A) present participation in the fishery,

"(B) historical fishing practices in, and dependence on, the fishery,

"(C) the economics of the fishery,

"(D) the capability of fishing vessels used in the fishery to engage in other fisheries,

"(E) the cultural and social framework relevant to the fishery and any affected fishing communities, and

"(F) any other relevant considerations;".

Subsec. (b)(7). Pub. L. 109-479, §105(5), struck out "other than economic data)" after "submit data".

Subsec. (b)(12), (14). Pub. L. 109-479, §105(6), (7), added par. (12) and redesignated former par. (12) as (14).

Subsec. (d). Pub. L. 109-479, §106(a)(1), struck out subsec. (d) which related to individual fishing quotas.

2000—Subsec. (d)(1)(A), (5). Pub. L. 106-554 substituted "October 1, 2002," for "October 1, 2000,".

1996—Subsec. (a)(1)(A). Pub. L. 104-297, §108(a)(1), inserted "and rebuild overfished stocks" after "overfishing".

Subsec. (a)(5). Pub. L. 104-297, §108(a)(2), inserted "commercial, recreational, and charter fishing in" after "with respect to".

Subsec. (a)(7). Pub. L. 104-297, §108(a)(3), added par. (7) and struck out former par. (7) which read as follows: "include readily available information regarding the significance of habitat to the fishery and assessment as to the effects which changes to that habitat may have upon the fishery;".

Subsec. (a)(9)(A). Pub. L. 104-297, §108(a)(5), inserted "and fishing communities" after "fisheries".

Subsec. (a)(10) to (14). Pub. L. 104-297, §108(a)(4), (6), (7), added pars. (10) to (14).

Subsec. (b)(3). Pub. L. 104-297, §108(c)(1), added par. (3) and struck out former par. (3) which read as follows: "establish specified limitations on the catch of fish (based on area, species, size, number, weight, sex, incidental catch, total biomass, or other factors), which are necessary and appropriate for the conservation and management of the fishery;".

Subsec. (b)(6). Pub. L. 104-297, §108(c)(2), substituted "limited access system for" for "system for limiting access to" in introductory provisions.

Subsec. (b)(6)(E). Pub. L. 104-297, §108(c)(3), inserted "and any affected fishing communities" after "fishery".

Subsec. (b)(8). Pub. L. 104-297, §108(c)(4), substituted "require that one or more" for "require that".

Subsec. (b)(10) to (12). Pub. L. 104-297, §108(c)(5)-(7), added pars. (10) and (11) and redesignated former par. (10) as (12).

Subsec. (c). Pub. L. 104-297, §108(d), added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows: "The proposed regulations which the Council deems necessary or appropriate for purposes of carrying out a plan or amendment to a plan shall be submitted to the Secretary simultaneously with the plan or amendment for action by the Secretary under sections 1854 and 1855 of this title."

Subsecs. (d) to (f). Pub. L. 104-297, §108(e), added subsec. (d) and struck out former subsecs. (d) relating to

confidentiality of statistics, (e) relating to data collection programs, and (f) relating to restriction on use of certain data.

1990—Subsec. (a)(1)(A). Pub. L. 101-627, §109(a)(1), inserted before semicolon at end “, to prevent overfishing, and to protect, restore, and promote the long-term health and stability of the fishery”.

Subsec. (a)(1)(C). Pub. L. 101-627, §109(a)(2), inserted “regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits),” after “this chapter,”.

Subsec. (a)(6). Pub. L. 101-627, §109(a)(3), amended par. (6) generally. Prior to amendment, par. (6) read as follows: “consider, and may provide for, temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safety of the vessels; and”.

Subsec. (a)(8), (9). Pub. L. 101-627, §109(a)(4), (5), added pars. (8) and (9).

Subsec. (b)(1). Pub. L. 101-627, §109(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “require a permit to be obtained from, and fees to be paid to, the Secretary with respect to any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone, or for anadromous species or Continental Shelf fishery resources beyond such zone;”.

Subsec. (b)(7) to (10). Pub. L. 101-627, §109(b)(2), added pars. (7) and (8) and redesignated former pars. (7) and (8) as (9) and (10), respectively.

Subsec. (d). Pub. L. 101-627, §109(c), in introductory provisions substituted “subsections (a) and (b)” for “subsection (a)(5)”, added par. (2), redesignated former par. (2) as (3), and inserted at end “Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any statistic submitted in compliance with a requirement under subsection (a) or (b) of this section.”

Subsec. (f). Pub. L. 101-627, §109(d), added subsec. (f). 1986—Subsec. (a)(6), (7). Pub. L. 99-659, §105(a)(1), added pars. (6) and (7).

Subsec. (b)(1). Pub. L. 99-659, §101(c)(2), substituted “exclusive economic zone” for “fishery conservation zone”.

Subsec. (d). Pub. L. 99-659, §105(b), amended first sentence generally. Prior to amendment, first sentence read as follows: “Any statistics submitted to the Secretary by any person in compliance with any requirement under subsection (a)(5) of this section shall be confidential and shall not be disclosed except when required under court order.”

1983—Subsec. (b)(7), (8). Pub. L. 97-453, §6(1), added par. (7) and redesignated former par. (7) as (8).

Subsec. (c). Pub. L. 97-453, §6(2), substituted provision that the proposed regulation which the Council deems necessary or appropriate for purposes of carrying out a plan or amendment to a plan shall be submitted to the Secretary simultaneously with the plan or amendment for action by the Secretary under sections 1854 and 1855 of this title, for provision that any Council could prepare any proposed regulations which it deemed necessary and appropriate to carry out any fishery management plan, or any amendment to any fishery management plan, which was prepared by it, and that such proposed regulations would be submitted to the Secretary, together with such plan or amendment, for action by the Secretary pursuant to sections 1854 and 1855 of this title.

Subsec. (e). Pub. L. 97-453, §6(3), added subsec. (e). 1978—Subsec. (a)(4)(C). Pub. L. 95-354, §5(2), added subpar. (C).

Subsec. (a)(5). Pub. L. 95-354, §5(3), inserted provisions relating to estimated processing capacity of, and the actual processing utilized by, United States fish processors.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2007 AMENDMENT; APPLICABILITY

Pub. L. 109-479, title I, §104(b), Jan. 12, 2007, 120 Stat. 3584, provided that: “The amendment made by subsection (a)(10) [amending this section]—

“(1) shall, unless otherwise provided for under an international agreement in which the United States participates, take effect—

“(A) in fishing year 2010 for fisheries determined by the Secretary to be subject to overfishing; and

“(B) in fishing year 2011 for all other fisheries; and

“(2) shall not apply to a fishery for species that have a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing of that species; and

“(3) shall not limit or otherwise affect the requirements of section 301(a)(1) or 304(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851(a)(1) or 1854(e), respectively).”

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-251 effective on date on which Agreement between United States and Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for United States, with authority to prescribe implementing regulations effective Mar. 9, 1992, but with no such regulation to be effective until date on which Agreement enters into force for United States, see section 708 of Pub. L. 102-251, set out as a note under section 373 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-659, title I, §105(a)(2), Nov. 14, 1986, 100 Stat. 3711, provided that: “The amendments made by paragraph (1) [amending this section] apply to each fishery management plan that—

“(A) is submitted to the Secretary of Commerce for review under section 304(a) of the Act [16 U.S.C. 1854(a)], or that is prepared by the Secretary, after January 1, 1987; or

“(B) is in effect on that date, but compliance with those amendments is not required except in conjunction with the amendment to the plan next occurring after that date.”

TRANSFER OF FUNCTIONS

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

EXCEPTIONS TO SUBSECTION (d)(1) AND SECTION 1883 PLAN RESTRICTIONS

Pub. L. 106-554, §1(a)(4) [div. B, title I, §144(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-238, provided that: “Notwithstanding sections 303(d)(1)(A) and 303(d)(1)(B) of the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1853(d)(1)(A), (B)], as amended by this section, the Pacific Fishery Management Council may recommend and the Secretary of Commerce may approve and implement any fishery management plan, plan amendment, or regulation, for fixed gear sablefish subject to the jurisdiction of such Council, that—

“(1) allows the use of more than one groundfish fishing permit by each fishing vessel; and/or

“(2) sets cumulative trip limit periods, up to 12 months in any calendar year, that allow fishing vessels a reasonable opportunity to harvest the full amount of the associated trip limits.

Notwithstanding subsection (a) [amending this section and section 1883 of this title], the Gulf of Mexico Fishery Management Council may develop a biological, eco-

conomic, and social profile of any fishery under its jurisdiction that may be considered for management under a quota management system, including the benefits and consequences of the quota management systems considered. The North Pacific Fishery Management Council shall examine the fisheries under its jurisdiction, particularly the Gulf of Alaska groundfish and Bering Sea crab fisheries, to determine whether rationalization is needed. In particular, the North Pacific Council shall analyze individual fishing quotas, processor quotas, cooperatives, and quotas held by communities. The analysis should include an economic analysis of the impact of all options on communities and processors as well as the fishing fleets. The North Pacific Council shall present its analysis to the appropriations and authorizing committees of the Senate and House of Representatives in a timely manner.”

IMPLEMENTATION OF AMENDMENTS TO PLANS REQUIRED BY SECTION 108(a) OF PUB. L. 104-297

Pub. L. 104-297, title I, §108(b), Oct. 11, 1996, 110 Stat. 3575, provided that: “Not later than 24 months after the date of enactment of this Act [Oct. 11, 1996], each Regional Fishery Management Council shall submit to the Secretary of Commerce amendments to each fishery management plan under its authority to comply with the amendments made in subsection (a) of this section [amending this section].”

INDIVIDUAL FISHING QUOTA REPORT

Pub. L. 104-297, title I, §108(f)(1)-(5), Oct. 11, 1996, 110 Stat. 3577-3579, as amended by Pub. L. 104-208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that:

“(1) Not later than October 1, 1998, the National Academy of Sciences, in consultation with the Secretary of Commerce and the Regional Fishery Management Councils, shall submit to the Congress a comprehensive final report on individual fishing quotas, which shall include recommendations to implement a national policy with respect to individual fishing quotas. The report shall address all aspects of such quotas, including an analysis of—

“(A) the effects of limiting or prohibiting the transferability of such quotas;

“(B) mechanisms to prevent foreign control of the harvest of United States fisheries under individual fishing quota programs, including mechanisms to prohibit persons who are not eligible to be deemed a citizen of the United States for the purpose of operating a vessel in the coastwise trade under section 2(a) and section 2(c) of the Shipping Act, 1916 ([former] 46 U.S.C. [App.] 802(a) and (c)) [see 46 U.S.C. 50501(a), (d)] from holding individual fishing quotas;

“(C) the impact of limiting the duration of individual fishing quota programs;

“(D) the impact of authorizing Federal permits to process a quantity of fish that correspond to individual fishing quotas, and of the value created for recipients of any such permits, including a comparison of such value to the value of the corresponding individual fishing quotas;

“(E) mechanisms to provide for diversity and to minimize adverse social and economic impacts on fishing communities, other fisheries affected by the displacement of vessels, and any impacts associated with the shifting of capital value from fishing vessels to individual fishing quotas, as well as the use of capital construction funds to purchase individual fishing quotas;

“(F) mechanisms to provide for effective monitoring and enforcement, including the inspection of fish harvested and incentives to reduce bycatch, and in particular economic discards;

“(G) threshold criteria for determining whether a fishery may be considered for individual fishing quota management, including criteria related to the geographical range, population dynamics and condition of a fish stock, the socioeconomic characteris-

tics of a fishery (including participants’ involvement in multiple fisheries in the region), and participation by commercial, charter, and recreational fishing sectors in the fishery;

“(H) mechanisms to ensure that vessel owners, vessel masters, crew members, and United States fish processors are treated fairly and equitably in initial allocations, to require persons holding individual fishing quotas to be on board the vessel using such quotas, and to facilitate new entry under individual fishing quota programs;

“(I) potential social and economic costs and benefits to the nation, individual fishing quota recipients, and any recipients of Federal permits described in subparagraph (D) under individual fishing quota programs, including from capital gains revenue, the allocation of such quotas or permits through Federal auctions, annual fees and transfer fees at various levels, or other measures;

“(J) the value created for recipients of individual fishing quotas, including a comparison of such value to the value of the fish harvested under such quotas and to the value of permits created by other types of limited access systems, and the effects of creating such value on fishery management and conservation; and

“(K) such other matters as the National Academy of Sciences deems appropriate.

“(2) The report shall include a detailed analysis of individual fishing quota programs already implemented in the United States, including the impacts: of any limits on transferability, on past and present participants, on fishing communities, on the rate and total amount of bycatch (including economic and regulatory discards) in the fishery, on the safety of life and vessels in the fishery, on any excess harvesting or processing capacity in the fishery, on any gear conflicts in the fishery, on product quality from the fishery, on the effectiveness of enforcement in the fishery, on the size and composition of fishing vessel fleets, on the economic value created by individual fishing quotas for initial recipients and non-recipients, on conservation of the fishery resource, on fishermen who rely on participation in several fisheries, on the success in meeting any fishery management plan goals, and the fairness and effectiveness of the methods used for allocating quotas and controlling transferability. The report shall also include any information about individual fishing quota programs in other countries that may be useful.

“(3) The report shall identify and analyze alternative conservation and management measures, including other limited access systems such as individual transferable effort systems, that could accomplish the same objectives as individual fishing quota programs, as well as characteristics that are unique to individual fishing quota programs.

“(4) The Secretary of Commerce shall, in consultation with the National Academy of Sciences, the Councils, the fishing industry, affected States, conservation organizations and other interested persons, establish two individual fishing quota review groups to assist in the preparation of the report, which shall represent: (A) Alaska, Hawaii, and the other Pacific coastal States; and (B) Atlantic coastal States and the Gulf of Mexico coastal States. The Secretary shall, to the extent practicable, achieve a balanced representation of viewpoints among the individuals on each review group. The review groups shall be deemed to be advisory panels under section 302(g) of the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1852(g)], as amended by this Act.

“(5) The Secretary of Commerce, in consultation with the National Academy of Sciences and the Councils, shall conduct public hearings in each Council region to obtain comments on individual fishing quotas for use by the National Academy of Sciences in preparing the report required by this subsection. The National Academy of Sciences shall submit a draft report to the Secretary of Commerce by January 1, 1998. The Secretary of Commerce shall publish in the Federal Register a no-

tice and opportunity for public comment on the draft of the report, or any revision thereof. A detailed summary of comments received and views presented at the hearings, including any dissenting views, shall be included by the National Academy of Sciences in the final report.”

EXISTING QUOTA PLANS

Pub. L. 104-297, title I, §108(i), Oct. 11, 1996, 110 Stat. 3581, provided that: “Nothing in this Act [see Short Title of 1996 Amendment note under section 1801 of this title] or the amendments made by this Act shall be construed to require a reallocation of individual fishing quotas under any individual fishing quota program approved by the Secretary before January 4, 1995.”

§ 1853a. Limited access privilege programs

(a) In general

After January 12, 2007, a Council may submit, and the Secretary may approve, for a fishery that is managed under a limited access system, a limited access privilege program to harvest fish if the program meets the requirements of this section.

(b) No creation of right, title, or interest

Limited access privilege, quota share, or other limited access system authorization established, implemented, or managed under this chapter—

(1) shall be considered a permit for the purposes of sections 1857, 1858, and 1859 of this title;

(2) may be revoked, limited, or modified at any time in accordance with this chapter, including revocation if the system is found to have jeopardized the sustainability of the stock or the safety of fishermen;

(3) shall not confer any right of compensation to the holder of such limited access privilege, quota share, or other such limited access system authorization if it is revoked, limited, or modified;

(4) shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested by the holder; and

(5) shall be considered a grant of permission to the holder of the limited access privilege or quota share to engage in activities permitted by such limited access privilege or quota share.

(c) Requirements for limited access privileges

(1) In general

Any limited access privilege program to harvest fish submitted by a Council or approved by the Secretary under this section shall—

(A) if established in a fishery that is overfished or subject to a rebuilding plan, assist in its rebuilding;

(B) if established in a fishery that is determined by the Secretary or the Council to have over-capacity, contribute to reducing capacity;

(C) promote—

- (i) fishing safety;
- (ii) fishery conservation and management; and
- (iii) social and economic benefits;

(D) prohibit any person other than a United States citizen, a corporation, partnership, or other entity established under

the laws of the United States or any State, or a permanent resident alien, that meets the eligibility and participation requirements established in the program from acquiring a privilege to harvest fish, including any person that acquires a limited access privilege solely for the purpose of perfecting or realizing on a security interest in such privilege;

(E) require that all fish harvested under a limited access privilege program be processed on vessels of the United States or on United States soil (including any territory of the United States);

(F) specify the goals of the program;

(G) include provisions for the regular monitoring and review by the Council and the Secretary of the operations of the program, including determining progress in meeting the goals of the program and this chapter, and any necessary modification of the program to meet those goals, with a formal and detailed review 5 years after the implementation of the program and thereafter to coincide with scheduled Council review of the relevant fishery management plan (but no less frequently than once every 7 years);

(H) include an effective system for enforcement, monitoring, and management of the program, including the use of observers or electronic monitoring systems;

(I) include an appeals process for administrative review of the Secretary’s decisions regarding initial allocation of limited access privileges;

(J) provide for the establishment by the Secretary, in consultation with appropriate Federal agencies, for an information collection and review process to provide any additional information needed to determine whether any illegal acts of anti-competition, anti-trust, price collusion, or price fixing have occurred among regional fishery associations or persons receiving limited access privileges under the program; and

(K) provide for the revocation by the Secretary of limited access privileges held by any person found to have violated the anti-trust laws of the United States.

(2) Waiver

The Secretary may waive the requirement of paragraph (1)(E) if the Secretary determines that—

(A) the fishery has historically processed the fish outside of the United States; and

(B) the United States has a seafood safety equivalency agreement with the country where processing will occur.

(3) Fishing communities

(A) In general

(i) Eligibility

To be eligible to participate in a limited access privilege program to harvest fish, a fishing community shall—

(I) be located within the management area of the relevant Council;

(II) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;