

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b), (c)(1)(G), (9), (g)(2), and (h), 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.

The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, referred to in subsec. (h), is Pub. L. 109-479, Jan. 12, 2007, 120 Stat. 3575. Section 302(f) of the Act (120 Stat. 3624) is not classified to the Code. For complete classification of this Act to the Code, see Short Title of 2007 Amendment note set out under section 1801 of this title and Tables.

AMENDMENTS

2007—Subsec. (c)(4)(A)(iii). Pub. L. 110-161, §529(1), substituted “association, among willing parties” for “association”.

Subsec. (i). Pub. L. 110-161, §529(2)-(4), struck out designation and heading of par. (1), redesignated subpars. (A) to (C) of former par. (1) as pars. (1) to (3), respectively, realigned margins, and struck out heading and text of former par. (2). Text of former par. (2) read as follows: “The requirements of this section, other than subparagraphs (A) and (B) of subsection (c)(1) and subparagraphs (A), (B), and (C) of paragraph (1) of this subsection, shall not apply to any proposal authorized under section 302(f) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 that is submitted within the timeframe prescribed by that section.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110-161, div. B, title V, §529, Dec. 26, 2007, 121 Stat. 1930, provided that the amendment made by section 529 is effective Jan. 13, 2007.

APPLICATION WITH AMERICAN FISHERIES ACT

Pub. L. 109-479, title I, §106(e), Jan. 12, 2007, 120 Stat. 3594, provided that: “Nothing in section 303A of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) [16 U.S.C. 1853a], as added by subsection (a), shall be construed to modify or supersede any provision of the American Fisheries Act [title II of div. C of Pub. L. 105-277, see Tables for classification] ([former] 46 U.S.C. 12102 note [see 46 U.S.C. 12113(e), (f), (h), (i)]; 16 U.S.C. 1851 note; et alia).”

§ 1854. Action by Secretary**(a) Review of plans**

(1) Upon transmittal by the Council to the Secretary of a fishery management plan or plan amendment, the Secretary shall—

(A) immediately commence a review of the plan or amendment to determine whether it is consistent with the national standards, the other provisions of this chapter, and any other applicable law; and

(B) immediately publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

(2) In undertaking the review required under paragraph (1), the Secretary shall—

(A) take into account the information, views, and comments received from interested persons;

(B) consult with the Secretary of State with respect to foreign fishing; and

(C) consult with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea and to fishery access adjustments referred to in section 1853(a)(6) of this title.

(3) The Secretary shall approve, disapprove, or partially approve a plan or amendment within 30 days of the end of the comment period under paragraph (1) by written notice to the Council. A notice of disapproval or partial approval shall specify—

(A) the applicable law with which the plan or amendment is inconsistent;

(B) the nature of such inconsistencies; and

(C) recommendations concerning the actions that could be taken by the Council to conform such plan or amendment to the requirements of applicable law.

If the Secretary does not notify a Council within 30 days of the end of the comment period of the approval, disapproval, or partial approval of a plan or amendment, then such plan or amendment shall take effect as if approved.

(4) If the Secretary disapproves or partially approves a plan or amendment, the Council may submit a revised plan or amendment to the Secretary for review under this subsection.

(5) For purposes of this subsection and subsection (b), the term “immediately” means on or before the 5th day after the day on which a Council transmits to the Secretary a fishery management plan, plan amendment, or proposed regulation that the Council characterizes as final.

(b) Review of regulations

(1) Upon transmittal by the Council to the Secretary of proposed regulations prepared under section 1853(c) of this title, the Secretary shall immediately initiate an evaluation of the proposed regulations to determine whether they are consistent with the fishery management plan, plan amendment, this chapter and other applicable law. Within 15 days of initiating such evaluation the Secretary shall make a determination and—

(A) if that determination is affirmative, the Secretary shall publish such regulations in the Federal Register, with such technical changes as may be necessary for clarity and an explanation of those changes, for a public comment period of 15 to 60 days; or

(B) if that determination is negative, the Secretary shall notify the Council in writing of the inconsistencies and provide recommendations on revisions that would make the proposed regulations consistent with the fishery management plan, plan amendment, this chapter, and other applicable law.

(2) Upon receiving a notification under paragraph (1)(B), the Council may revise the proposed regulations and submit them to the Secretary for reevaluation under paragraph (1).

(3) The Secretary shall promulgate final regulations within 30 days after the end of the comment period under paragraph (1)(A). The Secretary shall consult with the Council before making any revisions to the proposed regula-

tions, and must publish in the Federal Register an explanation of any differences between the proposed and final regulations.

(c) Preparation and review of Secretarial plans

(1) The Secretary may prepare a fishery management plan, with respect to any fishery, or any amendment to any such plan, in accordance with the national standards, the other provisions of this chapter, and any other applicable law, if—

(A) the appropriate Council fails to develop and submit to the Secretary, after a reasonable period of time, a fishery management plan for such fishery, or any necessary amendment to such a plan, if such fishery requires conservation and management;

(B) the Secretary disapproves or partially disapproves any such plan or amendment, or disapproves a revised plan or amendment, and the Council involved fails to submit a revised or further revised plan or amendment; or

(C) the Secretary is given authority to prepare such plan or amendment under this section.

(2) In preparing any plan or amendment under this subsection, the Secretary shall—

(A) conduct public hearings, at appropriate times and locations in the geographical areas concerned, so as to allow interested persons an opportunity to be heard in the preparation and amendment of the plan and any regulations implementing the plan; and

(B) consult with the Secretary of State with respect to foreign fishing and with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea.

(3) Notwithstanding paragraph (1) for a fishery under the authority of a Council, the Secretary may not include in any fishery management plan, or any amendment to any such plan, prepared by him, a provision establishing a limited access system, including any limited access privilege program, unless such system is first approved by a majority of the voting members, present and voting, of each appropriate Council.

(4) Whenever the Secretary prepares a fishery management plan or plan amendment under this section, the Secretary shall immediately—

(A) for a plan or amendment for a fishery under the authority of a Council, submit such plan or amendment to the appropriate Council for consideration and comment; and

(B) publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

(5) Whenever a plan or amendment is submitted under paragraph (4)(A), the appropriate Council must submit its comments and recommendations, if any, regarding the plan or amendment to the Secretary before the close of the 60-day period referred to in paragraph (4)(B). After the close of such 60-day period, the Secretary, after taking into account any such comments and recommendations, as well as any

views, information, or comments submitted under paragraph (4)(B), may adopt such plan or amendment.

(6) The Secretary may propose regulations in the Federal Register to implement any plan or amendment prepared by the Secretary. In the case of a plan or amendment to which paragraph (4)(A) applies, such regulations shall be submitted to the Council with such plan or amendment. The comment period on proposed regulations shall be 60 days, except that the Secretary may shorten the comment period on minor revisions to existing regulations.

(7) The Secretary shall promulgate final regulations within 30 days after the end of the comment period under paragraph (6). The Secretary must publish in the Federal Register an explanation of any substantive differences between the proposed and final rules. All final regulations must be consistent with the fishery management plan, with the national standards and other provisions of this chapter, and with any other applicable law.

(d) Establishment of fees

(1) The Secretary shall by regulation establish the level of any fees which are authorized to be charged pursuant to section 1853(b)(1) of this title. The Secretary may enter into a cooperative agreement with the States concerned under which the States administer the permit system and the agreement may provide that all or part of the fees collected under the system shall accrue to the States. The level of fees charged under this subsection shall not exceed the administrative costs incurred in issuing the permits.

(2)(A) Notwithstanding paragraph (1), the Secretary is authorized and shall collect a fee to recover the actual costs directly related to the management, data collection, and enforcement of any—

(i) limited access privilege program; and

(ii) community development quota program that allocates a percentage of the total allowable catch of a fishery to such program.

(B) Such fee shall not exceed 3 percent of the ex-vessel value of fish harvested under any such program, and shall be collected at either the time of the landing, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested.

(C)(i) Fees collected under this paragraph shall be in addition to any other fees charged under this chapter and shall be deposited in the Limited Access System Administration Fund established under section 1855(h)(5)(B) of this title.

(ii) Upon application by a State, the Secretary shall transfer to such State up to 33 percent of any fee collected pursuant to subparagraph (A) under a community development quota program and deposited in the Limited Access System Administration Fund in order to reimburse such State for actual costs directly incurred in the management and enforcement of such program.

(e) Rebuilding overfished fisheries

(1) The Secretary shall report annually to the Congress and the Councils on the status of fisheries within each Council's geographical area of

authority and identify those fisheries that are overfished or are approaching a condition of being overfished. For those fisheries managed under a fishery management plan or international agreement, the status shall be determined using the criteria for overfishing specified in such plan or agreement. A fishery shall be classified as approaching a condition of being overfished if, based on trends in fishing effort, fishery resource size, and other appropriate factors, the Secretary estimates that the fishery will become overfished within two years.

(2) If the Secretary determines at any time that a fishery is overfished, the Secretary shall immediately notify the appropriate Council and request that action be taken to end overfishing in the fishery and to implement conservation and management measures to rebuild affected stocks of fish. The Secretary shall publish each notice under this paragraph in the Federal Register.

(3) Within 2 years after an identification under paragraph (1) or notification under paragraphs (2) or (7), the appropriate Council (or the Secretary, for fisheries under section 1852(a)(3) of this title) shall prepare and implement a fishery management plan, plan amendment, or proposed regulations for the fishery to which the identification or notice applies—

(A) to end overfishing immediately in the fishery and to rebuild affected stocks of fish; or

(B) to prevent overfishing from occurring in the fishery whenever such fishery is identified as approaching an overfished condition.

(4) For a fishery that is overfished, any fishery management plan, amendment, or proposed regulations prepared pursuant to paragraph (3) or paragraph (5) for such fishery shall—

(A) specify a time period for rebuilding the fishery that shall—

(i) be as short as possible, taking into account the status and biology of any overfished stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock of fish within the marine ecosystem; and

(ii) not exceed 10 years, except in cases where the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise;

(B) allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery; and

(C) for fisheries managed under an international agreement, reflect traditional participation in the fishery, relative to other nations, by fishermen of the United States.

(5) If, within the 2-year period beginning on the date of identification or notification that a fishery is overfished, the Council does not submit to the Secretary a fishery management plan, plan amendment, or proposed regulations required by paragraph (3)(A), the Secretary shall prepare a fishery management plan or plan amendment and any accompanying regulations

to stop overfishing and rebuild affected stocks of fish within 9 months under subsection (c).

(6) During the development of a fishery management plan, a plan amendment, or proposed regulations required by this subsection, the Council may request the Secretary to implement interim measures to reduce overfishing under section 1855(c) of this title until such measures can be replaced by such plan, amendment, or regulations. Such measures, if otherwise in compliance with the provisions of this chapter, may be implemented even though they are not sufficient by themselves to stop overfishing of a fishery.

(7) The Secretary shall review any fishery management plan, plan amendment, or regulations required by this subsection at routine intervals that may not exceed two years. If the Secretary finds as a result of the review that such plan, amendment, or regulations have not resulted in adequate progress toward ending overfishing and rebuilding affected fish stocks, the Secretary shall—

(A) in the case of a fishery to which section 1852(a)(3) of this title applies, immediately make revisions necessary to achieve adequate progress; or

(B) for all other fisheries, immediately notify the appropriate Council. Such notification shall recommend further conservation and management measures which the Council should consider under paragraph (3) to achieve adequate progress.

(f) Fisheries under authority of more than one Council

(1) Except as provided in paragraph (3),¹ if any fishery extends beyond the geographical area of authority of any one Council, the Secretary may—

(A) designate which Council shall prepare the fishery management plan for such fishery and any amendment to such plan; or

(B) may require that the plan and amendment be prepared jointly by the Councils concerned.

No jointly prepared plan or amendment may be submitted to the Secretary unless it is approved by a majority of the voting members, present and voting, of each Council concerned.

(2) The Secretary shall establish the boundaries between the geographical areas of authority of adjacent Councils.

(g) Atlantic highly migratory species

(1) Preparation and implementation of plan or plan amendment

The Secretary shall prepare a fishery management plan or plan amendment under subsection (c) with respect to any highly migratory species fishery to which section 1852(a)(3) of this title applies. In preparing and implementing any such plan or amendment, the Secretary shall—

(A) consult with and consider the comments and views of affected Councils, commissioners and advisory groups appointed under Acts implementing relevant international fishery agreements pertaining to

¹ See References in Text note below.

highly migratory species, and the advisory panel established under section 1852(g) of this title;

(B) establish an advisory panel under section 1852(g) of this title for each fishery management plan to be prepared under this paragraph;

(C) evaluate the likely effects, if any, of conservation and management measures on participants in the affected fisheries and minimize, to the extent practicable, any disadvantage to United States fishermen in relation to foreign competitors;

(D) with respect to a highly migratory species for which the United States is authorized to harvest an allocation, quota, or at a fishing mortality level under a relevant international fishery agreement, provide fishing vessels of the United States with a reasonable opportunity to harvest such allocation, quota, or at such fishing mortality level;

(E) review, on a continuing basis (and promptly whenever a recommendation pertaining to fishing for highly migratory species has been made under a relevant international fishery agreement), and revise as appropriate, the conservation and management measures included in the plan;

(F) diligently pursue, through international entities (such as the International Commission for the Conservation of Atlantic Tunas), comparable international fishery management measures with respect to fishing for highly migratory species; and

(G) ensure that conservation and management measures under this subsection—

(i) promote international conservation of the affected fishery;

(ii) take into consideration traditional fishing patterns of fishing vessels of the United States and the operating requirements of the fisheries;

(iii) are fair and equitable in allocating fishing privileges among United States fishermen and do not have economic allocation as the sole purpose; and

(iv) promote, to the extent practicable, implementation of scientific research programs that include the tagging and release of Atlantic highly migratory species.

(2) Certain fish excluded from “bycatch” definition

Notwithstanding section 1802(2) of this title, fish harvested in a commercial fishery managed by the Secretary under this subsection or the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971d), or highly migratory species harvested in a commercial fishery managed by a Council under this chapter or the Western and Central Pacific Fisheries Convention Implementation Act [16 U.S.C. 6901 et seq.], that are not regulatory discards and that are tagged and released alive under a scientific tagging and release program established by the Secretary shall not be considered bycatch for purposes of this chapter.

(h) Repeal or revocation of a fishery management plan

The Secretary may repeal or revoke a fishery management plan for a fishery under the au-

thority of a Council only if the Council approves the repeal or revocation by a three-quarters majority of the voting members of the Council.

(i)² Environmental review process

(1) Procedures

The Secretary shall, in consultation with the Councils and the Council on Environmental Quality, revise and update agency procedures for compliance with the National Environmental Policy Act (42 U.S.C. 4231 et seq.). The procedures shall—

(A) conform to the time lines for review and approval of fishery management plans and plan amendments under this section; and

(B) integrate applicable environmental analytical procedures, including the time frames for public input, with the procedure for the preparation and dissemination of fishery management plans, plan amendments, and other actions taken or approved pursuant to this chapter in order to provide for timely, clear and concise analysis that is useful to decision makers and the public, reduce extraneous paperwork, and effectively involve the public.

(2) Usage

The updated agency procedures promulgated in accordance with this section used by the Councils or the Secretary shall be the sole environmental impact assessment procedure for fishery management plans, amendments, regulations, or other actions taken or approved pursuant to this chapter.

(3) Schedule for promulgation of final procedures

The Secretary shall—

(A) propose revised procedures within 6 months after January 12, 2007;

(B) provide 90 days for public review and comments; and

(C) promulgate final procedures no later than 12 months after January 12, 2007.

(4) Public participation

The Secretary is authorized and directed, in cooperation with the Council on Environmental Quality and the Councils, to involve the affected public in the development of revised procedures, including workshops or other appropriate means of public involvement.

(i)² International overfishing

The provisions of this subsection shall apply in lieu of subsection (e) to a fishery that the Secretary determines is overfished or approaching a condition of being overfished due to excessive international fishing pressure, and for which there are no management measures to end overfishing under an international agreement to which the United States is a party. For such fisheries—

(1) the Secretary, in cooperation with the Secretary of State,³ immediately take appropriate action at the international level to end the overfishing; and

(2) within 1 year after the Secretary’s determination, the appropriate Council, or Sec-

² So in original. Two subsecs. (i) have been enacted.

³ So in original. Probably should be followed by “shall”.

retary, for fisheries under section 1852(a)(3) of this title shall—

(A) develop recommendations for domestic regulations to address the relative impact of fishing vessels of the United States on the stock and, if developed by a Council, the Council shall submit such recommendations to the Secretary; and

(B) develop and submit recommendations to the Secretary of State, and to the Congress, for international actions that will end overfishing in the fishery and rebuild the affected stocks, taking into account the relative impact of vessels of other nations and vessels of the United States on the relevant stock.

(Pub. L. 94-265, title III, §304, Apr. 13, 1976, 90 Stat. 352; Pub. L. 97-453, §7(a), Jan. 12, 1983, 96 Stat. 2487; Pub. L. 99-659, title I, §106, Nov. 14, 1986, 100 Stat. 3712; Pub. L. 101-627, title I, §§110(a), (b)(1), (c), 111(a)(2), 120(d), Nov. 28, 1990, 104 Stat. 4449-4452, 4459; Pub. L. 102-567, title III, §303, Oct. 29, 1992, 106 Stat. 4283; Pub. L. 103-206, title VII, §702, Dec. 20, 1993, 107 Stat. 2446; Pub. L. 104-297, title I, §109(a)-(c), (e)-(g), (i), Oct. 11, 1996, 110 Stat. 3581-3585, 3587; Pub. L. 109-479, §3(d)(2), title I, §§104(c), 106(b), (d), 107, title IV, §406, Jan. 12, 2007, 120 Stat. 3578, 3584, 3593, 3594, 3633.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, 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.

Paragraph (3), referred to in subsec. (f)(1), was repealed by Pub. L. 104-297, title I, §109(f), Oct. 11, 1996, 110 Stat. 3585.

The Atlantic Tunas Convention Act of 1975, referred to in subsec. (g)(2), is Pub. L. 94-70, Aug. 5, 1975, 89 Stat. 385, which is classified generally to chapter 16A (§971 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 971 of this title and Tables.

The Western and Central Pacific Fisheries Convention Implementation Act, referred to in subsec. (g)(2), is title V of Pub. L. 109-479, Jan. 12, 2007, 120 Stat. 3635, which is classified generally to chapter 88 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The National Environmental Policy Act, referred to in subsec. (i)(1), probably means the National Environmental Policy Act of 1969, Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

AMENDMENTS

2007—Subsec. (c)(3). Pub. L. 109-479, §3(d)(2)(A), substituted “limited access privilege” for “individual fishing quota”.

Subsec. (d)(2)(A). Pub. L. 109-479, §106(b), substituted “management, data collection, and enforcement” for “management and enforcement” in introductory provisions.

Subsec. (d)(2)(A)(i). Pub. L. 109-479, §3(d)(2)(B), substituted “limited access privilege” for “individual fishing quota”.

Subsec. (d)(2)(C)(i). Pub. L. 109-479, §106(d), substituted “section 1855(h)(5)(B) of this title.” for “section 1855(h)(5)(B) of this title, except that the portion of any such fees reserved under section 1853(d)(4)(A) of this title shall be deposited in the Treasury and available, subject to annual appropriations, to cover the costs of new direct loan obligations and new loan guarantee commitments as required by section 661c(b)(1) of title 2.”

Subsec. (e)(3). Pub. L. 109-479, §104(c)(1), (2), substituted “2 years after” for “one year of” and inserted “and implement” after “prepare” in introductory provisions.

Subsec. (e)(3)(A). Pub. L. 109-479, §104(c)(3), inserted “immediately” after “overfishing”.

Subsec. (e)(4)(A). Pub. L. 109-479, §104(c)(4), struck out “ending overfishing and” before “rebuilding” in introductory provisions.

Subsec. (e)(5). Pub. L. 109-479, §104(c)(5), substituted “2-year” for “one-year”.

Subsec. (g)(2). Pub. L. 109-479, §406(b), substituted “(16 U.S.C. 971d), or highly migratory species harvested in a commercial fishery managed by a Council under this Act or the Western and Central Pacific Fisheries Convention Implementation Act,” for “(16 U.S.C. 971d)”.

Subsec. (i). Pub. L. 109-479, §406(a), added subsec. (i) relating to international overfishing.

Pub. L. 109-479, §107, added subsec. (i) relating to environmental review process.

1996—Subsecs. (a), (b). Pub. L. 104-297, §109(a), added subsecs. (a) and (b) and struck out former subsecs. (a) which related to actions by Secretary after receipt of a fishery management plan or amendment to a plan and (b) which related to implementation of approved plans and amendments and submission and review of revised plans and amendments.

Subsec. (c). Pub. L. 104-297, §109(b)(1), amended heading to read “Preparation and review of Secretarial plans”.

Subsec. (c)(1). Pub. L. 104-297, §109(b)(2)-(4), struck out “or” at end of subpar. (A), substituted “or amendment; or” for “or amendment, as the case may be.” in subpar. (B), added subpar. (C), and struck out concluding provisions which read as follows: “In preparing any such plan or amendment, the Secretary shall consult with the Secretary of State with respect to foreign fishing and with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea. The Secretary shall also prepare such proposed regulations as he deems necessary or appropriate to carry out each plan or amendment prepared by him under this paragraph.”

Subsec. (c)(2). Pub. L. 104-297, §109(b)(5), added par. (2) and struck out former par. (2) which related to procedures for making fishery management plans and amendments available for review and comment.

Subsec. (c)(3). Pub. L. 104-297, §109(b)(6), (7), inserted “for a fishery under the authority of a Council” after “paragraph (1)” and substituted “system, including any individual fishing quota program” for “system described in section 1853(b)(6) of this title”.

Subsec. (c)(4) to (7). Pub. L. 104-297, §109(b)(8), added pars. (4) to (7).

Subsec. (d). Pub. L. 104-297, §109(c), designated existing provisions as par. (1) and added par. (2).

Subsec. (e). Pub. L. 104-297, §109(e), amended heading and text of subsec. (e) generally. Prior to amendment, subsec. (e) required Secretary to initiate and maintain a comprehensive program of fishery research.

Subsec. (f)(3). Pub. L. 104-297, §109(f), struck out par. (3) which related to authority of Secretary over any highly migratory species fishery that is within the area of authority of more than one of certain Councils and to the preparation and amendment of fishery management plans with respect to such fishery.

Subsec. (g). Pub. L. 104-297, §109(g), added subsec. (g) and struck out former subsec. (g) which required the Secretary to establish a 3-year program to assess the impact on fishery resources of incidental harvest by the shrimp trawl fishery within the authority of the

Gulf of Mexico Fishery Management Council and the South Atlantic Fishery Management Council.

Subsec. (h). Pub. L. 104-297, §109(i), added subsec. (h). 1993—Subsec. (g)(6)(B). Pub. L. 103-206 substituted “April 1, 1994” for “January 1, 1994”.

1992—Subsec. (e)(1). Pub. L. 102-567 added par. (1). Former par. (1) redesignated (2).

Subsec. (e)(2). Pub. L. 102-567 redesignated par. (1) as (2) and substituted “(3)” for “(2)” in subpar. (A). Former par. (2) redesignated (3).

Subsec. (e)(3). Pub. L. 102-567 redesignated par. (2) as (3) and substituted “(2)” for “(1)” in introductory provisions. Former par. (3) redesignated (4).

Subsec. (e)(4). Pub. L. 102-567 redesignated par. (3) as (4) and substituted “(2)” for “(1)”.

1990—Subsec. (b)(1), (3)(D). Pub. L. 101-627, §111(a)(2)(A), (B), substituted “section 1855(a)” for “section 1855(c)”.

Subsec. (c)(2)(B). Pub. L. 101-627, §120(d), substituted “appropriate Council” for “appropriate council”.

Pub. L. 101-627, §111(a)(2)(C), substituted “section 1855(a)” for “section 1855(c)”.

Subsec. (e). Pub. L. 101-627, §110(a), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “The Secretary shall initiate and maintain, in cooperation with the Councils, a comprehensive program of fishery research to carry out and further the purposes, policy, and provisions of this chapter. Such program shall be designed to acquire knowledge and information, including statistics, on fishery conservation and management and on the economics of the fisheries, including, but not limited to, biological research concerning the interdependence of fisheries or stocks of fish, the impact of pollution on fish, the impact of wetland and estuarine degradation, and other matters bearing upon the abundance and availability of fish. The Secretary shall annually review and update the comprehensive program and make the results of the review and update available to the Councils.”

Subsec. (f). Pub. L. 101-627, §110(b)(1), in heading substituted “Fisheries under authority of more than one Council” for “Miscellaneous duties”, in par. (1) substituted “Except as provided in paragraph (3), if” for “If”, and added par. (3).

Subsec. (g). Pub. L. 101-627, §110(c), added subsec. (g). 1986—Subsec. (a)(1). Pub. L. 99-659, §106(1)(A), struck out “(the date of receipt of which is hereafter in this section referred to as the ‘receipt date’)” after “by a Council” in introductory provisions.

Subsec. (a)(1)(A), (B). Pub. L. 99-659, §106(1)(B), (C), added subpar. (A) and redesignated former subpars. (A) and (B) as (B) and (C), respectively.

Subsec. (a)(1)(C). Pub. L. 99-659, §106(1)(B), (D), redesignated former subpar. (B) as (C) and substituted “60-day” for “75-day”. Former subpar. (C) redesignated (D).

Subsec. (a)(1)(D). Pub. L. 99-659, §106(1)(B), (E), redesignated former subpar. (C) as (D) and substituted “15th day” for “30th day”.

Subsec. (a)(2). Pub. L. 99-659, §106(1)(F), substituted “paragraph (1)(B)” for “paragraph (1)(A)” in introductory provisions and inserted “and to fishery access adjustments referred to in section 1853(a)(6) of this title” in subpar. (C).

Subsec. (a)(3). Pub. L. 99-659, §106(1)(G), added par. (3).

Subsec. (b)(1)(A). Pub. L. 99-659, §106(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “the Secretary does not notify the Council in writing of his disapproval, or partial disapproval, under paragraph (2), of the plan or amendment before the close of the 95th day after the receipt date; or”.

Subsec. (b)(1)(B). Pub. L. 99-659, §106(2)(B), substituted “60th day” for “75th day”.

Subsec. (b)(2). Pub. L. 99-659, §106(2)(C), substituted “paragraph (1)(B)” for “paragraph (1)(A)” in introductory provisions.

Subsec. (b)(3)(A). Pub. L. 99-659, §106(2)(D)(i), inserted “disapproves a proposed plan or amendment under subsection (a)(1)(A)(ii) of this section, or”.

Subsec. (b)(3)(B)(i), (C)(i). Pub. L. 99-659, §106(2)(D)(ii), substituted “subsection (a)(1)(B)” for “subsection (a)(1)(A)”.

Subsec. (c)(2)(A)(ii). Pub. L. 99-659, §106(3)(A), substituted “60-day” for “75-day”.

Subsec. (c)(2)(A)(iii). Pub. L. 99-659, §106(3)(B), substituted “15th day” for “30th day”.

Subsec. (c)(2)(B). Pub. L. 99-659, §106(3)(C), substituted “60-day” for “75-day” in two places.

Subsec. (e). Pub. L. 99-659, §106(4), inserted “, in cooperation with the Councils.”, “and on the economics of the fisheries”, and “The Secretary shall annually review and update the comprehensive program and make the results of the review and update available to the Councils.”

1983—Subsec. (a). Pub. L. 97-453, §7(a)(1), amended subsec. (a) generally, which had provided that within 60 days after the Secretary received any fishery management plan, or any amendment to any such plan, which was prepared by any Council, the Secretary was to review such plan or amendment pursuant to subsection (b) of this section, notify such Council in writing of his approval, disapproval, or partial disapproval of such plan or amendment, and that in the case of disapproval or partial disapproval, the Secretary was to include in such notification a statement and explanation of the Secretary’s objections and the reasons therefor, suggestions for improvement, a request to such Council to change such plan or amendment to satisfy the objections, and a request to resubmit the plan or amendment, as so modified, to the Secretary within 45 days after the date on which the Council received such notification.

Subsec. (b). Pub. L. 97-453, §7(a)(1), amended subsec. (b) generally, which had provided that the Secretary was to review any fishery management plan, and any amendment to any such plan, prepared by any Council and submitted to him to determine whether it was consistent with the national standards, the other provisions of this chapter, and any other applicable law, and that in carrying out such review, the Secretary was to consult with the Secretary of State with respect to foreign fishing, and the Secretary of the department in which the Coast Guard was operating with respect to enforcement at sea.

Subsec. (c)(1). Pub. L. 97-453, §7(a)(2)(A), in subpar. (B) substituted “or disapproves a revised plan or amendment, and the Council involved fails to submit a revised or further revised plan or amendment, as the case may be” for “and the Council involved fails to change such plan or amendment in accordance with the notification made under subsection (a)(2) of this section”, and added to the provisions following subpar. (B) a requirement that the Secretary also prepare such proposed regulations as he deems necessary or appropriate to carry out each plan or amendment prepared by him under this paragraph.

Subsec. (c)(2). Pub. L. 97-453, §7(a)(2)(B), amended par. (2) generally, which had provided that whenever, pursuant to paragraph (1), the Secretary prepared a fishery management plan or amendment, the Secretary was to promptly transmit such plan or amendment to the appropriate Council for consideration and comment, that within 45 days after the date of receipt of such plan or amendment, the appropriate Council could recommend, to the Secretary, changes in such plan or amendment, consistent with the national standards, the other provisions of this chapter, and any other applicable law, and that after the expiration of such 45-day period, the Secretary could implement such plan or amendment pursuant to section 1855 of this title.

Subsec. (d). Pub. L. 97-453, §7(a)(3), inserted provisions relating to agreements with the States for the administration of the permit system and the permissible accrual to the States of fees collected under the system.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 109-479, title I, §104(d), Jan. 12, 2007, 120 Stat. 3585, provided that: “The amendments made by sub-

section (c) [amending this section] shall take effect 30 months after the date of enactment of this Act [Jan. 12, 2007].”

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97-453, §7(b), Jan. 12, 1983, 96 Stat. 2489, provided that: “The amendments made by subsection (a) [amending this section] shall only apply with respect to fishery management plans and amendments thereto that are initially submitted to the Secretary of Commerce on or after the date of the enactment of this Act [Jan. 12, 1983] for action under section 304 [this section].”

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. For treatment of references to Committee on Merchant Marine and Fisheries, see section 1(b)(3) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

INTERNATIONAL FISHERIES AGREEMENT

Pub. L. 111-348, title II, Jan. 4, 2011, 124 Stat. 3671, provided that:

“SEC. 201. SHORT TITLE.

“This title may be cited as the ‘International Fisheries Agreement Clarification Act’.

“SEC. 202. INTERNATIONAL FISHERY AGREEMENT.

“Consistent with the intent of provisions of the Magnuson-Stevens Fishery and Conservation and Management Act [Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq.] relating to international agreements, the Secretary of Commerce and the New England Fishery Management Council may, for the purpose of rebuilding those portions of fish stocks covered by the United States-Canada Transboundary Resource Sharing Understanding on the date of enactment of this Act [Jan. 4, 2011]—

“(1) take into account the Understanding and decisions made under that Understanding in the application of section 304(e)(4)(A)(i) of the Act (16 U.S.C. 1854(e)(4)(A)(i));

“(2) consider decisions made under that Understanding as ‘management measures under an international agreement’ that ‘dictate otherwise’ for purposes of section 304(e)(4)(A)(ii) of the Act (16 U.S.C. 1854(e)(4)(A)(ii)); and

“(3) establish catch levels for those portions of fish stocks within their respective geographic areas covered by the Understanding on the date of enactment of this Act that exceed the catch levels otherwise required under the Northeast Multispecies Fishery Management Plan if—

“(A) overfishing is ended immediately;

“(B) the fishing mortality level ensures rebuilding within a time period for rebuilding specified taking into account the Understanding pursuant to paragraphs (1) and (2) of this subsection; and

“(C) such catch levels are consistent with that Understanding.

“SEC. 203. APPLICATION WITH OTHER LAWS.

“Nothing in this title shall be construed to amend the Magnuson-Stevens Fishery Conservation and Man-

agement Act (16 U.S.C. 1851 [1801] et seq.) or to limit or otherwise alter the authority of the Secretary of Commerce under that Act concerning other species.

“SEC. 204. EFFECTIVE DATE.

“(a) IN GENERAL.—Except as provided in subsection (b), section 202 shall apply with respect to fishing years beginning after April 30, 2010.

“(b) SPECIAL RULE.—Section 202(3)(B) shall only apply with respect to fishing years beginning after April 30, 2012.”

DELAY OF COLLECTION OF FEES IN QUAHOG AND WRECKFISH FISHERIES

Pub. L. 104-297, title I, §109(d), Oct. 11, 1996, 110 Stat. 3584, 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: “Notwithstanding any other provision of law, the Secretary shall not begin the collection of fees under section 304(d)(2) of the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1854(d)(2)], as amended by this Act, in the surf clam and ocean (including mahogany) quahog fishery or in the wreckfish fishery until after January 1, 2000.”

COMPREHENSIVE MANAGEMENT SYSTEM FOR ATLANTIC PELAGIC LONGLINE FISHERY

Pub. L. 104-297, title I, §109(h), Oct. 11, 1996, 110 Stat. 3586, 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) The Secretary of Commerce shall—

“(A) establish an advisory panel under section 302(g)(4) of the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1852(g)(4)], as amended by this Act, for pelagic longline fishing vessels that participate in fisheries for Atlantic highly migratory species;

“(B) conduct surveys and workshops with affected fishery participants to provide information and identify options for future management programs;

“(C) to the extent practicable and necessary for the evaluation of options for a comprehensive management system, recover vessel production records; and

“(D) complete by January 1, 1998, a comprehensive study on the feasibility of implementing a comprehensive management system for pelagic longline fishing vessels that participate in fisheries for Atlantic highly migratory species, including, but not limited to, individual fishing quota programs and other limited access systems.

“(2) Based on the study under paragraph (1)(D) and consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), in cooperation with affected participants in the fishery, the United States Commissioners on the International Commission for the Conservation of Atlantic Tunas, and the advisory panel established under paragraph (1)(A), the Secretary of Commerce may, after October 1, 1998, implement a comprehensive management system pursuant to section 304 of such Act (16 U.S.C. 1854) for pelagic longline fishing vessels that participate in fisheries for Atlantic highly migratory species. Such a system may not implement an individual fishing quota program until after October 1, 2000.”

INAPPLICABILITY OF SUBSECTION (h) TO AMERICAN LOBSTER FISHERY MANAGEMENT PLAN

Pub. L. 104-297, title I, §109(j), Oct. 11, 1996, 110 Stat. 3587, 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: “Section 304(h) of the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1854(h)], as amended by this Act, shall not apply to the American Lobster Fishery Management Plan.”

INTERIM MANAGEMENT OF HIGHLY MIGRATORY SPECIES FISHERIES

Pub. L. 101-627, title I, §108(k), Nov. 28, 1990, 104 Stat. 4447, 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: “Notwithstanding the amendments made by subsections (a) and (g) [amending section 1852 of this title], any fishery management plan or amendment which—

“(1) addresses a highly migratory species fishery to which section 304(f)(3) of the Magnuson-Stevens Fishery Conservation and Management Act [former 16 U.S.C. 1854(f)(3)] (as amended by this Act) applies,

“(2) was prepared by one or more Regional Fishery Management Councils, and

“(3) was in force and effect on January 1, 1990, shall remain in force and effect until superseded by a fishery management plan prepared by the Secretary, and regulations implementing that plan.”

§ 1855. Other requirements and authority

(a) Gear evaluation and notification of entry

(1) Not later than 18 months after October 11, 1996, the Secretary shall publish in the Federal Register, after notice and an opportunity for public comment, a list of all fisheries—

(A) under the authority of each Council and all fishing gear used in such fisheries, based on information submitted by the Councils under section 1853(a) of this title; and

(B) to which section 1852(a)(3) of this title applies and all fishing gear used in such fisheries.

(2) The Secretary shall include with such list guidelines for determining when fishing gear or a fishery is sufficiently different from those listed as to require notification under paragraph (3).

(3) Effective 180 days after the publication of such list, no person or vessel may employ fishing gear or engage in a fishery not included on such list without giving 90 days advance written notice to the appropriate Council, or the Secretary with respect to a fishery to which section 1852(a)(3) of this title applies. A signed return receipt shall serve as adequate evidence of such notice and as the date upon which the 90-day period begins.

(4) A Council may submit to the Secretary any proposed changes to such list or such guidelines the Council deems appropriate. The Secretary shall publish a revised list, after notice and an opportunity for public comment, upon receiving any such proposed changes from a Council.

(5) A Council may request the Secretary to promulgate emergency regulations under subsection (c) to prohibit any persons or vessels from using an unlisted fishing gear or engaging in an unlisted fishery if the appropriate Council, or the Secretary for fisheries to which section 1852(a)(3) of this title applies, determines that such unlisted gear or unlisted fishery would compromise the effectiveness of conservation and management efforts under this chapter.

(6) Nothing in this subsection shall be construed to permit a person or vessel to engage in fishing or employ fishing gear when such fishing or gear is prohibited or restricted by regulation under a fishery management plan or plan amendment, or under other applicable law.

(b) Fish habitat

(1)(A) The Secretary shall, within 6 months of October 11, 1996, establish by regulation guidelines to assist the Councils in the description and identification of essential fish habitat in fishery management plans (including adverse

impacts on such habitat) and in the consideration of actions to ensure the conservation and enhancement of such habitat. The Secretary shall set forth a schedule for the amendment of fishery management plans to include the identification of essential fish habitat and for the review and updating of such identifications based on new scientific evidence or other relevant information.

(B) The Secretary, in consultation with participants in the fishery, shall provide each Council with recommendations and information regarding each fishery under that Council's authority to assist it in the identification of essential fish habitat, the adverse impacts on that habitat, and the actions that should be considered to ensure the conservation and enhancement of that habitat.

(C) The Secretary shall review programs administered by the Department of Commerce and ensure that any relevant programs further the conservation and enhancement of essential fish habitat.

(D) The Secretary shall coordinate with and provide information to other Federal agencies to further the conservation and enhancement of essential fish habitat.

(2) Each Federal agency shall consult with the Secretary with respect to any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any essential fish habitat identified under this chapter.

(3) Each Council—

(A) may comment on and make recommendations to the Secretary and any Federal or State agency concerning any activity authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by any Federal or State agency that, in the view of the Council, may affect the habitat, including essential fish habitat, of a fishery resource under its authority; and

(B) shall comment on and make recommendations to the Secretary and any Federal or State agency concerning any such activity that, in the view of the Council, is likely to substantially affect the habitat, including essential fish habitat, of an anadromous fishery resource under its authority.

(4)(A) If the Secretary receives information from a Council or Federal or State agency or determines from other sources that an action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by any State or Federal agency would adversely affect any essential fish habitat identified under this chapter, the Secretary shall recommend to such agency measures that can be taken by such agency to conserve such habitat.

(B) Within 30 days after receiving a recommendation under subparagraph (A), a Federal agency shall provide a detailed response in writing to any Council commenting under paragraph (3) and the Secretary regarding the matter. The response shall include a description of measures proposed by the agency for avoiding, mitigating, or offsetting the impact of the activity on such habitat. In the case of a response that is inconsistent with the recommendations of the Secretary, the Federal agency shall explain its reasons for not following the recommendations.