

**TITLE 16 - CONSERVATION**

**CHAPTER 38 - FISHERY CONSERVATION AND MANAGEMENT**

**SUBCHAPTER IV - NATIONAL FISHERY MANAGEMENT PROGRAM**

**§ 1861a. Transition to sustainable fisheries**

**(a) Fisheries disaster relief**

(1) At the discretion of the Secretary or at the request of the Governor of an affected State or a fishing community, the Secretary shall determine whether there is a commercial fishery failure due to a fishery resource disaster as a result of—

(A) natural causes;

(B) man-made causes beyond the control of fishery managers to mitigate through conservation and management measures, including regulatory restrictions (including those imposed as a result of judicial action) imposed to protect human health or the marine environment; or

(C) undetermined causes.

(2) Upon the determination under paragraph (1) that there is a commercial fishery failure, the Secretary is authorized to make sums available to be used by the affected State, fishing community, or by the Secretary in cooperation with the affected State or fishing community for assessing the economic and social effects of the commercial fishery failure, or any activity that the Secretary determines is appropriate to restore the fishery or prevent a similar failure in the future and to assist a fishing community affected by such failure. Before making funds available for an activity authorized under this section, the Secretary shall make a determination that such activity will not expand the size or scope of the commercial fishery failure in that fishery or into other fisheries or other geographic regions.

(3) The Federal share of the cost of any activity carried out under the authority of this subsection shall not exceed 75 percent of the cost of that activity.

(4) There are authorized to be appropriated to the Secretary such sums as are necessary for each of the fiscal years 2007 through 2013.

**(b) Fishing capacity reduction program**

(1) The Secretary, at the request of the appropriate Council for fisheries under the authority of such Council, the Governor of a State for fisheries under State authority, or a majority of permit holders in the fishery, may conduct a voluntary fishing capacity reduction program (referred to in this section as the “program”) in a fishery if the Secretary determines that the program—

(A) is necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the fishery;

(B) is consistent with the Federal or State fishery management plan or program in effect for such fishery, as appropriate, and that the fishery management plan—

(i) will prevent the replacement of fishing capacity removed by the program through a moratorium on new entrants, practicable restrictions on vessel upgrades, and other effort control measures, taking into account the full potential fishing capacity of the fleet; and

(ii) establishes a specified or target total allowable catch or other measures that trigger closure of the fishery or adjustments to reduce catch; and

(C) is cost-effective and, in the instance of a program involving an industry fee system, prospectively capable of repaying any debt obligation incurred under section 53735 of title 46.

(2) The objective of the program shall be to obtain the maximum sustained reduction in fishing capacity at the least cost and in a minimum period of time. To achieve that objective, the Secretary is authorized to pay—

- (A) the owner of a fishing vessel, if the permit authorizing the participation of the vessel in the fishery is surrendered for permanent revocation and the vessel owner and permit holder relinquish any claim associated with the vessel or permit that could qualify such owner or holder for any present or future limited access system permit in the fishery for which the program is established or in any other fishery and such vessel is
- (i) scrapped, or
  - (ii) through the Secretary of the department in which the Coast Guard is operating, subjected to title restrictions (including loss of the vessel's fisheries endorsement) that permanently prohibit and effectively prevent its use in fishing in federal<sup>1</sup> or state<sup>1</sup> waters, or fishing on the high seas or in the waters of a foreign nation; or
- (B) the holder of a permit authorizing participation in the fishery, if such permit is surrendered for permanent revocation, and such holder relinquishes any claim associated with the permit and vessel used to harvest fishery resources under the permit that could qualify such holder for any present or future limited access system permit in the fishery for which the program was established.
- (3) Participation in the program shall be voluntary, but the Secretary shall ensure compliance by all who do participate.
- (4) The harvester proponents of each program and the Secretary shall consult, as appropriate and practicable, with Councils, Federal agencies, State and regional authorities, affected fishing communities, participants in the fishery, conservation organizations, and other interested parties throughout the development and implementation of any program under this section.
- (5) **Payment condition.**— The Secretary may not make a payment under paragraph (2) with respect to a vessel that will not be scrapped unless the Secretary certifies that the vessel will not be used for fishing in the waters of a foreign nation or fishing on the high seas.
- (6) **Report.**—
- (A) **In general.**— Subject to the availability of funds, the Secretary shall, within 12 months after January 12, 2007, submit to the Congress a report—
- (i) identifying and describing the 20 fisheries in United States waters with the most severe examples of excess harvesting capacity in the fisheries, based on value of each fishery and the amount of excess harvesting capacity as determined by the Secretary;
  - (ii) recommending measures for reducing such excess harvesting capacity, including the retirement of any latent fishing permits that could contribute to further excess harvesting capacity in those fisheries; and
  - (iii) potential sources of funding for such measures.
- (B) **Basis for recommendations.**— The Secretary shall base the recommendations made with respect to a fishery on—
- (i) the most cost effective means of achieving voluntary reduction in capacity for the fishery using the potential for industry financing; and
  - (ii) including measures to prevent the capacity that is being removed from the fishery from moving to other fisheries in the United States, in the waters of a foreign nation, or on the high seas.
- (c) **Program funding**
- (1) The program may be funded by any combination of amounts—
- (A) available under clause (iv) of section 713c-3 (b)(1)(A) of title 15;
  - (B) appropriated for the purposes of this section;
  - (C) provided by an industry fee system established under subsection (d) of this section and in accordance with section 53735 of title 46; or
  - (D) provided from any State or other public sources or private or non-profit organizations.

(2) All funds for the program, including any fees established under subsection (d) of this section, shall be paid into the fishing capacity reduction fund established under section 53735 of title 46.

**(d) Industry fee system**

(1) (A) If an industry fee system is necessary to fund the program, the Secretary may conduct a referendum on such system. Prior to the referendum, the Secretary shall—

(i) identify, to the extent practicable, and notify all permit or vessel owners who would be affected by the program; and

(ii) make available to such owners information about the industry fee system describing the schedule, procedures, and eligibility requirements for the referendum, the proposed program, and the amount and duration and any other terms and conditions of the proposed fee system.

(B) The industry fee system shall be considered approved if the referendum votes which are cast in favor of the proposed system constitute at least a majority of the permit holders in the fishery, or 50 percent of the permitted allocation of the fishery, who participated in the fishery.

(2) Notwithstanding section 1854 (d) of this title and consistent with an approved industry fee system, the Secretary is authorized to establish such a system to fund the program and repay debt obligations incurred pursuant to section 53735 of title 46. The fees for a program established under this section shall—

(A) be determined by the Secretary and adjusted from time to time as the Secretary considers necessary to ensure the availability of sufficient funds to repay such debt obligations;

(B) not exceed 5 percent of the ex-vessel value of all fish harvested from the fishery for which the program is established;

(C) be deducted by the first ex-vessel fish purchaser from the proceeds otherwise payable to the seller and accounted for and forwarded by such fish purchasers to the Secretary in such manner as the Secretary may establish, unless the Secretary determines that such fees should be collected from the seller; and

(D) be in effect only until such time as the debt obligation has been fully paid.

**(e) Implementation plan**

**(1) Framework regulations**

The Secretary shall propose and adopt framework regulations applicable to the implementation of all programs under this section.

**(2) Program regulations**

The Secretary shall implement each program under this section by promulgating regulations that, together with the framework regulations, establish each program and control its implementation.

**(3) Harvester proponents' implementation plan**

The Secretary may not propose implementation regulations for a program to be paid for by an industry fee system until the harvester proponents of the program provide to the Secretary a proposed implementation plan that, among other matters—

(A) proposes the types and numbers of vessels or permits that are eligible to participate in the program and the manner in which the program shall proceed, taking into account—

(i) the requirements of this section;

(ii) the requirements of the framework regulations;

(iii) the characteristics of the fishery and affected fishing communities;

(iv) the requirements of the applicable fishery management plan and any amendment that such plan may require to support the proposed program;

(v) the general needs and desires of harvesters in the fishery;

- (vi) the need to minimize program costs; and
- (vii) other matters, including the manner in which such proponents propose to fund the program to ensure its cost effectiveness, as well as any relevant factors demonstrating the potential for, or necessary to obtain, the support and general cooperation of a substantial number of affected harvesters in the fishery (or portion of the fishery) for which the program is intended; and

(B) proposes procedures for program participation (such as submission of owner bids under an auction system or fair market-value assessment), including any terms and conditions for participation, that the harvester proponents deem to be reasonably necessary to meet the program's proposed objectives.

#### (4) Participation contracts

The Secretary shall contract with each person participating in a program, and each such contract shall, in addition to including such other matters as the Secretary deems necessary and appropriate to effectively implement each program (including penalties for contract non-performance) be consistent with the framework and implementing regulations and all other applicable law.

#### (5) Reduction auctions

Each program not involving fair market assessment shall involve a reduction auction that scores the reduction price of each bid offer by the data relevant to each bidder under an appropriate fisheries productivity factor. If the Secretary accepts bids, the Secretary shall accept responsive bids in the rank order of their bid scores, starting with the bid whose reduction price is the lowest percentage of the productivity factor, and successively accepting each additional responsive bid in rank order until either there are no more responsive bids or acceptance of the next bid would cause the total value of bids accepted to exceed the amount of funds available for the program.

#### (6) Bid invitations

Each program shall proceed by the Secretary issuing invitations to bid setting out the terms and conditions for participation consistent with the framework and implementing regulations. Each bid that the Secretary receives in response to the invitation to bid shall constitute an irrevocable offer from the bidder.

### Footnotes

<sup>1</sup> So in original. Probably should be capitalized.

(Pub. L. 94–265, title III, § 312, as added Pub. L. 104–297, title I, § 116(a), Oct. 11, 1996, 110 Stat. 3600; amended Pub. L. 109–479, title I, § 112(a), Jan. 12, 2007, 120 Stat. 3598.)

### Codification

In subsecs. (b)(1)(C), (c)(1)(C), (2), and (d)(2), “section 53735 of title 46” substituted for “section 1111 of title XI of the Merchant Marine Act, 1936” on authority of Pub. L. 109–304, § 18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted section 53735 of Title 46, Shipping.

### Prior Provisions

A prior section 312 of Pub. L. 94–265, title III, Apr. 13, 1976, 90 Stat. 359, was set out as an Effective Date note under section 1857 of this title, prior to being amended generally by Pub. L. 104–297.

### Amendments

2007—Subsec. (a)(1)(B). Pub. L. 109–479, § 112(a)(1), substituted “measures, including regulatory restrictions (including those imposed as a result of judicial action) imposed to protect human health or the marine environment;” for “measures;”.

Subsec. (a)(4). Pub. L. 109–479, § 112(a)(2), substituted “2007 through 2013.” for “1996, 1997, 1998, and 1999.”

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

Subsec. (b)(1). Pub. L. 109–479, § 112(a)(3), in introductory provisions, substituted “the Governor of a State for fisheries under State authority, or a majority of permit holders in the fishery, may conduct a voluntary fishing” for “or the Governor of a State for fisheries under State authority, may conduct a fishing”.

Subsec. (b)(1)(B)(i). Pub. L. 109–479, § 112(a)(4), inserted “practicable” after “entrants”.

Subsec. (b)(1)(C). Pub. L. 109–479, § 112(a)(5), substituted “cost-effective and, in the instance of a program involving an industry fee system, prospectively” for “cost-effective and”.

Subsec. (b)(2)(A). Pub. L. 109–479, § 112(a)(6), added subpar. (A) and struck out former subpar. (A) which read as follows: “the owner of a fishing vessel, if such vessel is (i) scrapped, or (ii) through the Secretary of the department in which the Coast Guard is operating, subjected to title restrictions that permanently prohibit and effectively prevent its use in fishing, and if the permit authorizing the participation of the vessel in the fishery is surrendered for permanent revocation and the owner relinquishes any claim associated with the vessel and permit that could qualify such owner for any present or future limited access system permit in the fishery for which the program is established; or”.

Subsec. (b)(4). Pub. L. 109–479, § 112(a)(7), substituted “The harvester proponents of each program and the Secretary shall consult, as appropriate and practicable, with Councils,” for “The Secretary shall consult, as appropriate, with Councils,”.

Subsec. (b)(5), (6). Pub. L. 109–479, § 112(a)(8), added pars. (5) and (6).

Subsec. (d)(1)(A). Pub. L. 109–479, § 112(a)(9), (10), in introductory provisions, substituted “Secretary” for “Secretary, at the request of the appropriate Council,” before “may conduct” and “Secretary” for “Secretary, in consultation with the Council,” before “shall—”.

Subsec. (d)(1)(B). Pub. L. 109–479, § 112(a)(11), substituted “at least a majority of the permit holders in the fishery, or 50 percent of the permitted allocation of the fishery, who participated in the fishery.” for “a two-thirds majority of the participants voting.”

Subsec. (d)(2)(C). Pub. L. 109–479, § 112(a)(12), substituted “establish, unless the Secretary determines that such fees should be collected from the seller;” for “establish;”.

Subsec. (e). Pub. L. 109–479, § 112(a)(13), added subsec. (e) and struck out former subsec. (e) which related to implementation plan.

## Effective Date

Pub. L. 109–479, title I, § 112(b), Jan. 12, 2007, 120 Stat. 3601, provided that: “Sections 116, 203, 204, 205, and 206 of the Sustainable Fisheries Act [Pub. L. 104–297, see Tables for classification] are deemed to have added sections 312, 402, 403, 404, and 405 [16 U.S.C. 1861a, 1881a to 1881d], respectively to the Act [Pub. L. 94–265] as of the date of enactment of the Sustainable Fisheries Act [Oct. 11, 1996].”

## Study of Federal Investment in Fisheries

Pub. L. 104–297, title I, § 116(b), Oct. 11, 1996, 110 Stat. 3603, 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: “The Secretary of Commerce shall establish a task force comprised of interested parties to study and report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources [now Committee on Natural Resources] of the House of Representatives within 2 years of the date of enactment of this Act [Oct. 11, 1996] on the role of the Federal Government in—

“(1) subsidizing the expansion and contraction of fishing capacity in fishing fleets managed under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.); and

“(2) otherwise influencing the aggregate capital investments in fisheries.”