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| § 951. Definitions | 4 |
| § 952. Commissioners; number, appointment, and qualification | 5 |
| § 953. General Advisory Committee and Scientific Advisory Subcommittee | 6 |
| § 955. Secretary of State to act for United States | 8 |
| § 956. Inspection of returns, records, or other reports | 9 |
| § 957. Violations; fines and forfeitures; application of related laws | 10 |
| § 958. Cooperation with other agencies | 11 |
| § 959. Enforcement of chapter | 11 |
| § 960. Commissions’ functions not restrained by this chapter or State laws | 13 |
| § 961. Authorization of appropriations | 13 |
| § 962. Reduction of bycatch in eastern tropical Pacific Ocean | 14 |
TITLE 16 CONSERVATION

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see http://www.law.cornell.edu/uscode/uscprint.html).

TITLE 16—CONSERVATION

Chap. ...Sec.
1. National Parks, Military Parks, Monuments, and Seashores ...1
   1A. Historic Sites, Buildings, Objects, and Antiquities ...461
   1B. Archaeological Resources Protection ...470aa
   1C. Paleontological Resources Preservation ...470aaa
2. National Forests ...471
3. Forests; Forest Service; Reforestation; Management ...551
   3A. Unemployment Relief Through Performance of Useful Public Work [Omitted or Repealed] ...584
   3B. Soil Conservation ...590a
   3C. Water Conservation ...590r
4. Protection of Timber, and Depredations ...591
5. Protection of Fur Seals and Other Fur-Bearing Animals ...631
   5A. Protection and Conservation of Wildlife ...661
   5B. Wildlife Restoration ...669
   5C. Conservation Programs on Government Lands ...670a
6. Game and Bird Preserves; Protection ...671
7. Protection of Migratory Game and Insectivorous Birds ...701
8. Upper Mississippi River National Wildlife and Fish Refuge ...721
9. Fish and Wildlife Service ...741
   9A. Preservation of Fishery Resources ...755
   9B. National Fish Hatchery System Enhancement ...760aa
10. Northern Pacific Halibut Fishing ...761
   10A. Sockeye or Pink Salmon Fishing [Repealed] ...776
   10B. Fish Restoration and Management Projects ...777
   10C. Fish Research and Experimentation Program ...778
   10D. State Commercial Fisheries Research and Development Projects [Repealed] ...779
11. Regulation of Landing, Curing, and Sale of Sponges Taken From Gulf of Mexico and Straits of Florida ...781
12. Federal Regulation and Development of Power ...791
   12A. Tennessee Valley Authority ...831
   12B. Bonneville Project ...832
   12C. Fort Peck Project ...833
   12D. Columbia Basin Project ...835
   12E. Niagara Power Project ...836
   12F. Pacific Northwest Consumer Power Preference; Reciprocal Priority in Other Regions ...837
   12G. Pacific Northwest Federal Transmission System ...838
   12H. Pacific Northwest Electric Power Planning and Conservation ...839
13. Regulation of Transportation in Interstate or Foreign Commerce of Black Bass and Other Fish [Repealed] ...851
14. Regulation of Whaling ...901
   14A. Whale Conservation and Protection ...917
15. Predatory Sea Lampreys in the Great Lakes [Omitted] ...921
   15A. Great Lakes Fisheries ...931
   15B. Great Lakes Fish and Wildlife Restoration ...941
   15C. Great Lakes Fish and Wildlife Tissue Bank ...943
16. Tuna Conventions ...951
   16A. Atlantic Tuna Convention ...971
   16B. Eastern Pacific Tuna Fishing ...972
   16C. South Pacific Tuna Fishing ...973
17. Northwest Atlantic Fisheries [Repealed] ...981
18. Watershed Protection and Flood Prevention ...1001
   18A. Cooperative Watershed Management Program ...1015
19. North Pacific Fisheries [Repealed or Transferred] ...1021
20. National Fisheries Center and Aquarium ...1051
21. Prohibition of Foreign Fishing Vessels in the Territorial Waters of the United States [Repealed] ...1081
   21A. Fisheries Zone Contiguous to Territorial Sea of the United States [Repealed] ...1091
   21B. Prohibition of Certain Foreign Fishing Vessels in United States Fisheries [Omitted] ...1100
   21C. Offshore Shrimp Fisheries [Omitted] ...1100b
22. International Parks ...1101
23. National Wilderness Preservation System ...1131
24. Conservation and Protection of North Pacific Fur Seals ...1151
25. Jellyfish or Sea Nettles, Other Such Pests, and Seaweed in Coastal Waters: Control or Elimination ...1201
25A. Crown of Thorns Starfish ...1211
25B. Reefs for Marine Life Conservation ...1220
26. Estuarine Areas ...1221
27. National Trails System ...1241
27A. National Recreational Trails Fund ...1261
28. Wild and Scenic Rivers ...1271
29. Water Bank Program for Wetlands Preservation ...1301
30. Wild Horses and Burros: Protection, Management, and Control ...1331
31. Marine Mammal Protection ...1361
32. Marine Sanctuaries ...1431
32A. Regional Marine Research Programs ...1447
33. Coastal Zone Management ...1451
34. Rural Environmental Conservation Program [Repealed] ...1501
35. Endangered Species ...1531
36. Forest and Rangeland Renewable Resources Planning ...1600
37. Youth Conservation Corps and Public Lands Corps ...1701
38. Fishery Conservation and Management ...1801
39. Mining Activity Within National Park System Areas ...1901
40. Soil and Water Resources Conservation ...2001
41. Cooperative Forestry Assistance ...2101
42. Emergency Conservation Program ...2201
43. Public Transportation Programs for National Park System Areas ...2301
44. Antarctic Conservation ...2401
44A. Antarctic Marine Living Resources Convention ...2431
44B. Antarctic Mineral Resources Protection ...2461
45. Urban Park and Recreation Recovery Program ...2501
46. Public Utility Regulatory Policies ...2601
47. Small Hydroelectric Power Projects ...2701
48. National Aquaculture Policy, Planning, and Development ...2801
49. Fish and Wildlife Conservation ...2901
50. Chesapeake Bay Research Coordination [Omitted] ...3001
51. Alaska National Interest Lands Conservation ...3101
52. Salmon and Steelhead Conservation and Enhancement ...3301
53. Control of Illegally Taken Fish and Wildlife ...3371
54. Resource Conservation ...3401
55. Coastal Barrier Resources ...3501
56. North Atlantic Salmon Fishing ...3601
56A. Pacific Salmon Fishing ...3631
57. National Fish and Wildlife Foundation ...3701
57A. Partnerships for Wildlife ...3741
57B. Partners for Fish and Wildlife ...3771
58. Erodible Land and Wetland Conservation and Reserve Program ...3801
59. Wetlands Resources ...3901
59A. Wetlands ...3951
60. Fish and Seafood Promotion ...4001
61. Interjurisdictional Fisheries ...4101
62. African Elephant Conservation ...4201
62A. Asian Elephant Conservation ...4261
63. Federal Cave Resources Protection ...4301
64. North American Wetlands Conservation ...4401
65. International Forestry Cooperation ...4501
66. Take Pride in America Program ...4601
67. Aquatic Nuisance Prevention and Control ...4701
68. Pacific Yew Conservation and Management [Omitted or Repealed] ...4801
69. Wild Exotic Bird Conservation ...4901
70. North Pacific Anadromous Stocks Convention ...5001
71. Atlantic Coastal Fisheries Cooperative Management ...5101
71A. Atlantic Striped Bass Conservation ...5151
72. Recreational Hunting Safety ...5201
73. Rhinoceros and Tiger Conservation ...5301
74. National Maritime Heritage ...5401
75. High Seas Fishing Compliance ...5501
76. Northwest Atlantic Fisheries Convention ...5601
77. Yukon River Salmon ...5701
78. National Natural Resources Conservation Foundation ...5801
79. National Park Service Management ...5901
80. Neotropical Migratory Bird Conservation ...6101
81. User Fees Under Forest System Recreation Residence Program ...6201
81A. National Forest Organizational Camp Fee Improvement ...6231
82. Great Ape Conservation ...6301
83. Coral Reef Conservation ...6401
84. Healthy Forest Restoration ...6501
85. Marine Turtle Conservation ...6601
86. Southwest Forest Health and Wildfire Prevention ...6701
87. Federal Lands Recreation Enhancement ...6801
88. Western and Central Pacific Fisheries Convention ...6901
89. Pacific Whiting ...7001
90. Secure Rural Schools and Community Self-Determination ...7101
91. National Landscape Conservation System ...7201
92. Forest Landscape Restoration ...7301
CHAPTER 16—TUNA CONVENTIONS

Sec.
951. Definitions.
952. Commissioners; number, appointment, and qualification.
953. General Advisory Committee and Scientific Advisory Subcommittee.
954. Repealed.
955. Secretary of State to act for United States.
956. Inspection of returns, records, or other reports.
957. Violations; fines and forfeitures; application of related laws.
958. Cooperation with other agencies.
959. Enforcement of chapter.
960. Commissions' functions not restrained by this chapter or State laws.
962. Reduction of bycatch in eastern tropical Pacific Ocean.

§ 951. Definitions

As used in this chapter, the term—

(a) “convention” includes

(1) the Convention for the Establishment of an International Commission for the Scientific Investigation of Tuna, signed at Mexico City, January 25, 1949, by the United States of America and the United Mexican States,

(2) the Convention for the Establishment of an Inter-American Tropical Tuna Commission, signed at Washington, May 31, 1949, by the United States of America and the Republic of Costa Rica, or both such conventions, as the context requires;

(b) “commission” includes

(1) the International Commission for the Scientific Investigation of Tuna,

(2) the Inter-American Tropical Tuna Commission provided for by the conventions referred to in subsection (a) of this section, or both such commissions, as the context requires;

(c) “United States Commissioners” means the members of the commissions referred to in subsection (b) of this section representing the United States of America and appointed pursuant to the terms of the pertinent convention and section 952 of this title;

(d) “person” means every individual, partnership, corporation, and association subject to the jurisdiction of the United States; and

(e) “United States” shall include all areas under the sovereignty of the United States, the Trust Territory of the Pacific Islands, and the Canal Zone.


References in Text

For definition of Canal Zone, referred to in subsec. (e), see section 3602 (b) of Title 22, Foreign Relations and Intercourse.

Amendments


Effective Date

Section 14 of act Sept. 7, 1950, provided: “This Act [this chapter] shall take effect with respect to each of the conventions upon the entry into force of that convention, unless such entry into force shall be prior to the date of approval of this Act [Sept. 7, 1950] in which case this Act [this chapter] shall take effect immediately.” The Costa
§ 952. Commissioners; number, appointment, and qualification

The United States shall be represented on the two commissions by a total of not more than four United States Commissioners, who shall be appointed by the President, serve as such during his pleasure, and receive no compensation for their services as such Commissioners. Individuals serving as such Commissioners shall not be considered to be Federal employees while performing such service, except for purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5 and chapter 171 of title 28. Of such Commissioners—

(a) not more than one shall be a person residing elsewhere than in a State whose vessels maintain a substantial fishery in the areas of the conventions;
(b) at least one of the Commissioners who are such legal residents shall be a person chosen from the public at large, and who is not a salaried employee of a State or of the Federal Government;
(c) at least one shall be either the Administrator, or an appropriate officer, of the National Marine Fisheries Service; and
(d) at least one shall be chosen from a nongovernmental conservation organization.


Amendments

2000—Pub. L. 106–562 inserted after first sentence “Individuals serving as such Commissioners shall not be considered to be Federal employees while performing such service, except for purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5 and chapter 171 of title 28.”

1997—Subsec. (c). Pub. L. 105–42, which directed the general amendment of section 3(c) of the Tuna Convention Act, was executed by making the amendment to subsec. (c) of this section, to reflect the probable intent of Congress. Prior to amendment, subsec. (c) read as follows: “at least one shall be an officer of the Department of Commerce; and”.

§ 953. General Advisory Committee and Scientific Advisory Subcommittee

(a) Appointments; public participation; compensation

The Secretary, in consultation with the United States Commissioners, shall—

(1) appoint a General Advisory Committee which shall be composed of not less than 5 nor more than 15 persons with balanced representation from the various groups participating in the fisheries included under the conventions, and from nongovernmental conservation organizations;

(2) appoint a Scientific Advisory Subcommittee which shall be composed of not less than 5 nor more than 15 qualified scientists with balanced representation from the public and private sectors, including nongovernmental conservation organizations;

(3) establish procedures to provide for appropriate public participation and public meetings and to provide for the confidentiality of confidential business data; and

(4) fix the terms of office of the members of the General Advisory Committee and Scientific Advisory Subcommittee, who shall receive no compensation for their services as such members.

(b) Functions

(1) General Advisory Committee

The General Advisory Committee shall be invited to have representatives attend all nonexecutive meetings of the United States sections and shall be given full opportunity to examine and to be heard on all proposed programs of investigations, reports, recommendations, and regulations of the Commission. The General Advisory Committee may attend all meetings of the international commissions to which they are invited by such commissions.

(2) Scientific Advisory Subcommittee

(A) Advice

The Scientific Advisory Subcommittee shall advise the General Advisory Committee and the Commissioners on matters including—

(i) the conservation of ecosystems;

(ii) the sustainable uses of living marine resources related to the tuna fishery in the eastern Pacific Ocean; and

(iii) the long-term conservation and management of stocks of living marine resources in the eastern tropical Pacific Ocean.

(B) Other functions and assistance

The Scientific Advisory Subcommittee shall, as requested by the General Advisory Committee, the United States Commissioners, or the Secretary, perform functions and provide assistance required by formal agreements entered into by the United States for this fishery, including the International Dolphin Conservation Program. These functions may include—

(i) the review of data from the Program, including data received from the Inter-American Tropical Tuna Commission;

(ii) recommendations on research needs, including ecosystems, fishing practices, and gear technology research, including the development and use of selective,
environmentally safe and cost-effective fishing gear, and on the coordination and facilitation of such research;
(iii) recommendations concerning scientific reviews and assessments required under the Program and engaging, as appropriate, in such reviews and assessments;
(iv) consulting with other experts as needed; and
(v) recommending measures to assure the regular and timely full exchange of data among the parties to the Program and each nation’s National Scientific Advisory Committee (or its equivalent).

(3) Attendance at meetings

The Scientific Advisory Subcommittee shall be invited to have representatives attend all nonexecutive meetings of the United States sections and the General Advisory Subcommittee and shall be given full opportunity to examine and to be heard on all proposed programs of scientific investigation, scientific reports, and scientific recommendations of the commission. Representatives of the Scientific Advisory Subcommittee may attend meetings of the Inter-American Tropical Tuna Commission in accordance with the rules of such Commission.


Amendments

1997—Pub. L. 105–42 which directed insertion of catchline and general amendment of text of section 4 of the Tuna Conventions Act, was executed to this section, to reflect the probable intent of Congress. Prior to amendment, text read as follows: “The United States Commissioners shall (a) appoint an advisory committee which shall be composed of not less than five nor more than fifteen persons who shall be selected from the various groups participating in the fisheries included under the conventions, and from nongovernmental conservation organizations, and (b) shall fix the terms of office of the members of such committee, who shall receive no compensation for their services as such members. The advisory committee shall be invited to attend all nonexecutive meetings of the United States sections and shall be given full opportunity to examine and to be heard on all proposed programs of investigation, reports, recommendations, and regulations of the commissions. The advisory committee may attend all meetings of the international commissions to which they are invited by such commissions.”


Effective Date of 1997 Amendment

For effective date of amendment by Pub. L. 105–42, see section 8 of Pub. L. 105–42, set out as a note under section 1362 of this title.

Termination of Advisory Committees

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.


Section, act Sept. 7, 1950, ch. 907, § 5, 64 Stat. 778, provided that service of individuals appointed as United States Commissioners shall not be treated as service for the purposes of certain sections of Title 18, Crimes and Criminal Procedure, and Title 5, Government Organization and Employees.
§ 955. Secretary of State to act for United States

(a) Approval of commission bylaws and rules; action on reports, requests, and recommendations

The Secretary of State is authorized to approve or disapprove, on behalf of the United States Government, bylaws and rules, or amendments thereof, adopted by each commission and submitted for approval of the United States Government in accordance with the provisions of the conventions, and, with the concurrence of the Secretary of Commerce, to approve or disapprove the general annual programs of the commissions. The Secretary of State is further authorized to receive, on behalf of the United States Government, reports, requests, recommendations, and other communications of the commissions, and to take appropriate action thereon either directly or by reference to the appropriate authority.

(b) Regulations

Regulations recommended by each commission pursuant to the convention requiring the submission to the commission of records of operations by boat captains or other persons who participate in the fisheries covered by the convention, upon the concurrent approval of the Secretary of State and the Secretary of Commerce, shall be promulgated by the latter and upon publication in the Federal Register, shall be applicable to all vessels and persons subject to the jurisdiction of the United States.

(c) Rulemaking procedures; prohibitions

Regulations required to carry out recommendations of the commission made pursuant to paragraph 5 of article II of the Convention for the Establishment of an Inter-American Tropical Tuna Commission shall be promulgated as hereinafter provided by the Secretary of Commerce upon approval of such recommendations by the Secretary of State and the Secretary of Commerce. The Secretary of Commerce shall cause to be published in the Federal Register a general notice of proposed rulemaking and shall afford interested persons an opportunity to participate in the rulemaking through

(1) submission of written data, views, or arguments, and

(2) oral presentation at a public hearing. Such regulations shall be published in the Federal Register and shall be accompanied by a statement of the considerations involved in the issuance of the regulations. After publication in the Federal Register such regulations shall be applicable to all vessels and persons subject to the jurisdiction of the United States on such date as the Secretary of Commerce shall prescribe, but in no event prior to an agreed date for the application by all countries whose vessels engage in fishing for species covered by the convention in the regulatory area on a meaningful scale, in terms of effect upon the success of the conservation program, of effective measures for the implementation of the commission’s recommendations applicable to all vessels and persons subject to their respective jurisdictions. The Secretary of Commerce shall suspend at any time the application of any such regulations when, after consultation with the Secretary of State and the United States Commissioners, he determines that foreign fishing operations in the regulatory area are such as to constitute a serious threat to the achievement of the objectives of the commission’s recommendations. The regulations thus promulgated may include the selection for regulation of one or more of the species covered by the convention; the division of the convention waters into areas; the establishment of one or more open or closed seasons as to each area; the limitation of the size of the fish and quantity of the catch which may be taken from each area within any season during which fishing is allowed; the limitation or prohibition of the incidental catch of a regulated species which may be retained, taken, possessed, or landed by vessels or persons fishing for other species of fish; the requiring of such clearance certificates for vessels as may be necessary to carry out the purposes of the convention and this chapter; and such other measures incidental thereto as the Secretary of Commerce may deem necessary to implement the recommendations of the commission: Provided, That upon the promulgation of any such regulations the Secretary of
Commerce shall promulgate additional regulations, with the concurrence of the Secretary of State, which shall become effective simultaneously with the application of the regulations hereinbefore referred to

(1) to prohibit the entry into the United States, from any country when the vessels of such country are being used in the conduct of fishing operations in the regulatory area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the commission, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the commission and which were taken from the regulatory area; and

(2) to prohibit entry into the United States, from any country, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the commission and which were taken from the regulatory area by vessels other than those of such country in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the commission. In the case of repeated and flagrant fishing operations in the regulatory area by the vessels of any country which seriously threaten the achievement of the objectives of the commission’s recommendations, the Secretary of Commerce, with the concurrence of the Secretary of State, may, in his discretion, also prohibit the entry from such country of such other species of tuna, in any form, as may be under investigation by the commission and which were taken in the regulatory area. The aforesaid prohibitions shall continue until the Secretary of Commerce is satisfied that the condition warranting the prohibition no longer exists, except that all fish in any form of the species under regulation which were previously prohibited from entry shall continue to be prohibited from entry.


### Amendments

1962—Subsecs. (a), (b). Pub. L. 87–814 substituted “Secretary of the Interior” for “head of the enforcement agency”.


### Transfer of Functions

“Secretary of Commerce” substituted in text for “Secretary of the Interior” in view of: creation of National Oceanic and Atmospheric Administration in Department of Commerce and Office of Administrator of such Administration; abolition of Bureau of Commercial Fisheries in Department of the Interior and Office of Director of such Bureau; transfers of functions, including functions formerly vested by law in Secretary of the Interior or Department of the Interior which were administered through Bureau of Commercial Fisheries or were primarily related to such Bureau; exclusive of certain enumerated functions with respect to Great Lakes fishery research, Missouri River Reservoir research, Gulf Breeze Biological Laboratory, and Trans-Alaska pipeline investigations; and transfer of marine sport fish program of Bureau of Sport Fisheries and Wildlife by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to Title 5, Government Organization and Employees.

### § 956. Inspection of returns, records, or other reports

Any person authorized to carry out enforcement activities under this chapter and any person authorized by the commissions shall have power without warrant or other process, to inspect, at any reasonable time, catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this chapter to be made, kept, or furnished.

Amendments

1962—Pub. L. 87–814 substituted provisions respecting inspection of returns, records, or other reports for provisions authorizing a fine not exceeding $1,000 and proceedings for injunction against fishing for or possessing the kind of fish covered by the convention for failure to make, keep, furnish, or refusal to permit inspection of returns, records, or reports or for furnishing a false return, record, or report.

§ 957. Violations; fines and forfeitures; application of related laws

(a) It shall be unlawful for any master or other person in charge of a fishing vessel of the United States to engage in fishing in violation of any regulation adopted pursuant to section 955 (c) of this title or for any person knowingly to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish taken or retained in violation of such regulations.

(b) It shall be unlawful for the master or any person in charge of any fishing vessel of the United States or any person on board such vessel to fail to make, keep, or furnish any catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this chapter to be made, kept, or furnished; or to fail to stop upon being hailed by a duly authorized official of the United States; or to refuse to permit the duly authorized officials of the United States or authorized officials of the commissions to board such vessel or inspect its catch, equipment, books, documents, records, or other articles or question the persons on board in accordance with the provisions of this chapter, or the convention, as the case may be.

(c) It shall be unlawful for any person to import, in violation of any regulation adopted pursuant to section 955 (c) of this title, from any country, any fish in any form of those species subject to regulation pursuant to a recommendation of the commission, or any tuna in any form not under regulation but under investigation by the commission, during the period such fish have been denied entry in accordance with the provisions of section 955 (c) of this title. In the case of any fish as described in this subsection offered for entry into the United States, the Secretary of Commerce shall require proof satisfactory to him that such fish is not ineligible for such entry under the terms of section 955 (c) of this title.

(d) Any person violating any provisions of subsection (a) of this section shall be fined not more than $25,000, and for a subsequent violation of any provisions of said subsection (a) shall be fined not more than $50,000.

(e) Any person violating any provision of subsection (b) of this section shall be fined not more than $1,000, and for a subsequent violation of any provision of subsection (b) shall be fined not more than $5,000.

(f) Any person violating any provision of subsection (c) of this section shall be fined not more than $100,000.

(g) All fish taken or retained in violation of subsection (a) of this section, or the monetary value thereof, may be forfeited.

(h) All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a cargo for violation of the customs laws, the disposition of such cargo or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as such provisions of law are applicable and not inconsistent with the provisions of this chapter.


Amendments

§ 958. Cooperation with other agencies

(a) Coordination of programs

In order to provide coordination between the general annual programs of the commissions and programs of other agencies, relating to the exploration, development, and conservation of fishery resources, the Secretary of State may recommend to the United States Commissioners that they consider the relationship of the commissions’ programs to those of such agencies and when necessary arrange, with the concurrence of such agencies, for mutual cooperation between the commissions and such agencies for carrying out their respective programs.

(b) Scientific and other programs; facilities and personnel

All agencies of the Federal Government are authorized on request of the commissions to cooperate in the conduct of scientific and other programs, or to furnish facilities and personnel for the purpose of assisting the commissions in the performance of their duties.

(c) Facilities and personnel to non-Federal agencies

The commissions are authorized and empowered to supply facilities and personnel to existing non-Federal agencies to expedite research work which in the judgment of the commissions is contributing or will contribute directly to the purposes of the conventions.

(Sept. 7, 1950, ch. 907, § 9, 64 Stat. 779.)

§ 959. Enforcement of chapter

(a) Issuance of process

The judges of the United States district courts and United States magistrate judges may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this chapter and the regulations issued pursuant thereto.

(b) Federal law enforcement agents

Enforcement of the provisions of this chapter and the regulations issued pursuant thereto shall be the joint responsibility of the United States Coast Guard, the United States Department of Commerce, and the United States Customs Service. In addition, the Secretary of Commerce may designate officers and employees of the States of the United States, of the Commonwealth of Puerto Rico, and of American Samoa to carry out enforcement activities hereunder. When so designated, such officers and employees are authorized to function as Federal law enforcement agents for these purposes.

(c) Execution of process

Any person authorized to carry out enforcement activities hereunder shall have the power to execute any warrant or process issued by any officer or court of competent jurisdiction for the enforcement of this chapter.

(d) Arrests

Such person so authorized shall have the power—

(1) with or without a warrant or other process, to arrest any persons subject to the jurisdiction of the United States at any place within the jurisdiction of the United States committing in his presence or view a violation of this chapter or the regulations issued thereunder;
(2) with or without a warrant or other process, to search any vessel subject to the jurisdiction of the United States, and, if as a result of such search he has reasonable cause to believe that such vessel or any person on board is engaging in operations in violation of the provisions of this chapter or the regulations issued thereunder, then to arrest such person.

(e) Seizures and disposition of fish

Such person so authorized may seize, whenever and wherever lawfully found, all fish taken or retained in violation of the provisions of this chapter or the regulations issued pursuant thereto. Any fish so seized may be disposed of pursuant to the order of a court of competent jurisdiction, pursuant to the provisions of subsection (f) of this section or, if perishable, in a manner prescribed by regulations of the Secretary of Commerce.

(f) Security

Notwithstanding the provisions of section 2464 of title 28, when a warrant of arrest or other process in rem is issued in any cause under this section, the marshal or other officer shall stay the execution of such process, or discharge any fish seized if the process has been levied, on receiving from the claimant of the fish a bond or stipulation for the value of the property with sufficient surety to be approved by a judge of the district court having jurisdiction of the offense, conditioned to deliver the fish seized, if condemned, without impairment in value or, in the discretion of the court, to pay its equivalent value in money or otherwise to answer the decree of the court in such case. Such bond or stipulation shall be returned to the court and judgment thereon against both the principal and sureties may be recovered in event of any breach of the conditions thereof as determined by the court. In the discretion of the accused, and subject to the direction of the court, the fish may be sold for not less than its reasonable market value and the proceeds of such sale placed in the registry of the court pending judgment in the case.


Amendments

1962—Subsec. (a). Pub. L. 87–814 substituted provisions for issuance of process for provisions respecting arrest and execution of process, incorporated in subsecs. (c) and (d)(1) of this section.


Subsec. (c). Pub. L. 87–814 substituted provisions for execution of process, formerly incorporated in subsec. (a), for provisions respecting the functioning of officers and law enforcement officers, incorporated in subsec. (b) of this section.

Subsec. (d). Pub. L. 87–814 incorporated provisions of former subsec. (a) in par. (1) and added par. (2).

Subsecs. (e), (f). Pub. L. 87–814 added subsecs. (e) and (f).

Change of Name


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
§ 960. Commissions’ functions not restrained by this chapter or State laws

None of the prohibitions contained in this chapter or in the laws and regulations of the States shall prevent the commissions from conducting or authorizing the conduct of fishing operations and biological experiments at any time for the purpose of scientific investigations as authorized by the conventions, or shall prevent the commissions from discharging any of its or their functions or duties prescribed by the conventions.

(Sept. 7, 1950, ch. 907, § 11, 64 Stat. 779.)

§ 961. Authorization of appropriations

There is hereby authorized to be appropriated from time to time, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of each convention and of this chapter, including—

(a) contributions to each commission for the United States share of any joint expenses of the commission and the expenses of the United States Commissioners and their staff, including personal services in the District of Columbia and elsewhere;
(b) travel expenses without regard to the Standardized Government Travel Regulations, as amended, subchapter I of chapter 57 of title 5, or section 5731 (a) of title 5;
(c) printing and binding without regard to section 501 of title 44 or section 6101 of title 41;
(d) stenographic and other services by contract, if deemed necessary, without regard to section 6101 of title 41; and
(e) purchase, hire, operation, maintenance, and repair of aircraft, motor vehicles (including passenger-carrying vehicles), boats and research vessels.

(Sept. 7, 1950, ch. 907, § 12, 64 Stat. 780.)

Codification

In subsec. (b), “subchapter I of chapter 57 of title 5, or section 5731 (a) of title 5” substituted for “the Travel Expense Act of 1949, or section 10 of the Act of March 3, 1933 (U.S.C., title 5, sec. 73b)” on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.


§ 962. Reduction of bycatch in eastern tropical Pacific Ocean

The Secretary of State, in consultation with the Secretary of Commerce and acting through the United States Commissioners, shall seek, in cooperation with other nations whose vessel ¹ fish for tuna in the eastern tropical Pacific Ocean, to establish standards and measures for a bycatch reduction program for vessels fishing for yellowfin tuna in the eastern tropical Pacific Ocean. The bycatch reduction program shall include measures—

   (1) to require, to the maximum extent practicable, that sea turtles and other threatened species and endangered species are released alive;
   (2) to reduce, to the maximum extent practicable, the harvest of nontarget species;
   (3) to reduce, to the maximum extent practicable, the mortality of nontarget species; and
   (4) to reduce, to the maximum extent practicable, the mortality of juveniles of the target species.

Footnotes

¹ So in original. Probably should be “vessels”.


Codification

Section 7(c) of Pub. L. 105–42, which directed the addition of this section at the end of the Tuna Conventions Act, was executed by adding this section at the end of the Tuna Conventions Act of 1950, to reflect the probable intent of Congress.

Effective Date

Section effective upon certification by Secretary of Commerce that sufficient funding is available to complete first year of study required by section 1414a (a) of this title and that study has commenced, and certification by Secretary of State to Congress that binding resolution of Inter-American Tropical Tuna Commission or other legally binding instrument establishing International Dolphin Conservation Program has been adopted and is in force, see section 8 of Pub. L. 105–42, set out as an Effective Date of 1997 Amendment note under section 1362 of this title.