US Code
(Unofficial compilation from the Legal Information Institute)

TITLE 16 - CONSERVATION
CHAPTER 60—FISH AND SEAFOOD PROMOTION

Please Note: This compilation of the US Code, current as of Jan. 4, 2012, has been prepared by the Legal Information Institute using data from the U.S. House of Representatives, Office of the Law Revision Counsel. It is not an official U.S. government publication. For more details please see: http://www.law.cornell.edu/uscode/uscprint.html.

Notes on this document: The content in this document is taken directly from the US Code, with the following exceptions: page headers and footers, page numbering, and all formatting are artifacts of this presentation. Divider lines have been inserted between sections. The notes are set off by a vertical line and a larger left margin. The table of contents immediately following this title page is machine-generated from the headings in this portion of the Code. Commonly available fonts are used.

The Legal Information Institute promotes worldwide, free public access to law via the Internet. Founded in 1992, the LII created the first legal information website. It continues to be a pre-eminent "law-not-com" publisher of legal information and an important outreach activity of the Cornell Law School.
<table>
<thead>
<tr>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>TITLE 16 - CONSERVATION</td>
<td>1</td>
</tr>
<tr>
<td>CHAPTER 60 - FISH AND SEAFOOD PROMOTION</td>
<td>4</td>
</tr>
<tr>
<td>§ 4001. Congressional findings</td>
<td>4</td>
</tr>
<tr>
<td>§ 4002. Congressional statement of purpose</td>
<td>5</td>
</tr>
<tr>
<td>§ 4003. Definitions</td>
<td>5</td>
</tr>
<tr>
<td>§ 4004. Establishment of National Council</td>
<td>6</td>
</tr>
<tr>
<td>§ 4005. Functions and duties of National Council</td>
<td>8</td>
</tr>
<tr>
<td>§ 4006. Duties of Secretary with regard to National Council</td>
<td>9</td>
</tr>
<tr>
<td>§ 4007. Voluntary payments</td>
<td>10</td>
</tr>
<tr>
<td>§ 4008. Establishment of Fisheries Promotional Fund</td>
<td>10</td>
</tr>
<tr>
<td>§ 4009. Establishment of seafood marketing councils</td>
<td>10</td>
</tr>
<tr>
<td>§ 4010. Functions and powers of councils</td>
<td>13</td>
</tr>
<tr>
<td>§ 4011. Functions and powers of Secretary</td>
<td>15</td>
</tr>
<tr>
<td>§ 4012. Assessments</td>
<td>16</td>
</tr>
<tr>
<td>§ 4013. Petitions</td>
<td>17</td>
</tr>
<tr>
<td>§ 4014. Refunds</td>
<td>17</td>
</tr>
<tr>
<td>§ 4015. Termination of a council</td>
<td>18</td>
</tr>
<tr>
<td>§ 4016. Enforcement</td>
<td>19</td>
</tr>
<tr>
<td>§ 4017. Investigations</td>
<td>20</td>
</tr>
</tbody>
</table>
### 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 60—FISH AND SEAFOOD PROMOTION

Sec.
4001. Congressional findings.
4002. Congressional statement of purpose.
4003. Definitions.
4005. Functions and duties of National Council.
4006. Duties of Secretary with regard to National Council.
4007. Voluntary payments.
4008. Establishment of Fisheries Promotional Fund.
4009. Establishment of seafood marketing councils.
4010. Functions and powers of councils.
4011. Functions and powers of Secretary.
4012. Assessments.
4013. Petitions.
4014. Refunds.
4015. Termination of a council.
4016. Enforcement.
4017. Investigations.

§ 4001. Congressional findings

The Congress finds that—

(1) the commercial fishing industry of the United States significantly contributes to the national economy, and could make a greater contribution if fish resources within the United States Exclusive Economic Zone were more fully utilized;

(2) the commercial fisheries of the United States provide significant employment in coastal areas and in processing and distribution centers;

(3) fish contribute an important nutritional component to the American diet;

(4) increased consumption of seafood in the United States could significantly lower the risk of many cardiovascular diseases;

(5) Federally supported development programs for commercial fisheries are unable to meet present and future marketing needs;

(6) many fish species are underutilized by the United States fishing industry because of underdeveloped markets; and

(7) the United States fishing industry has the potential to expand greatly its contribution to interstate and foreign commerce, favorably affecting the balance of trade.


Short Title

Section 201 of title II of Pub. L. 99–659 provided that: “This title [enacting this chapter and amending section 713c–3 of Title 15, Commerce and Trade] may be cited as the ‘Fish and Seafood Promotion Act of 1986.’”

Report to Congress on Fish and Seafood Promotion

Section 219 of title II of Pub. L. 99–659 provided that: “The Secretary shall, not later than March 1, 1989, submit to the Congress a report on the effectiveness of the implementation of this title [enacting this chapter and amending section 713c–3 of Title 15, Commerce and Trade] in achieving the purposes of this title.”
§ 4002. Congressional statement of purpose

The purpose of this chapter is to—

(1) strengthen the competitive position of the United States commercial fishing industry in the domestic and international marketplace;
(2) encourage the development and utilization of all species of fish available for harvest by the United States fishing industry;
(3) encourage the utilization of domestically-produced fish through enhancement of markets, promotion, and public relations;
(4) help the United States fishing industry develop methods to improve quality and efficiency in the marketplace;
(5) educate and inform consumers on the use of fish;
(6) develop better coordination of fisheries marketing and promotion activities with commercial fisheries research and development programs; and
(7) educate and inform the public about the nutritional value of fish in the diet.


References in Text

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

§ 4003. Definitions

As used in this chapter, the term—

(1) “consumer education” means actions undertaken to inform consumers on matters related to the consumption of fish and fish products;
(2) “council” means a seafood promotional council established under section 4009 of this title;
(3) “fish” means finfish, mollusks, crustaceans, and all other forms of aquatic animal life used for human consumption; the term does not include marine mammals and seabirds;
(4) “Fund” means the Fisheries Promotional Fund established in section 4008 of this title;
(5) “harvester” means any individual who is in the business of catching or growing fish for purposes of sale;
(6) “importer” means any person in the business of importing fish or fish products into the United States from another country for commercial purposes or who acts as an agent, broker, or consignee for any person or nation that produces, processes or markets fish or fish products outside of the United States for sale or other commercial purpose in the United States;
(7) “marketer” means any person who is in the business of selling fish or fish products in the wholesale, retail, or restaurant trade, but whose primary business function is not the processing or packaging of fish or fish products in preparation for sale;
(8) “marketing and promotion” means an activity aimed at encouraging the consumption of fish or fish products or expanding or maintaining commercial markets for fish or fish products;
(9) “member” means any person serving on the National Council or on any council;
(10) “National Council” means the National Fish and Seafood Promotional Council established in section 4004 of this title;
“person” means any individual, group of individuals, partnership, corporation, association, cooperative, or any private entity organized or existing under the laws of the United States or any State, commonwealth, territory or possession of the United States;

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

“receiver” means any person who owns fish processing vessels and any person in the business of acquiring fish directly from harvesters;

“research” means any type of research designed to advance the image, desirability, usage, marketability, production or quality of fish and fish products;

“sector” means—

(A) the sector consisting of harvesters;

(B) the sector consisting of importers;

(C) the sector consisting of marketers;

(D) the sector consisting of processors;

(E) the sector consisting of receivers; or

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

“Secretary” means the Secretary of Commerce, or the Secretary’s designee; and

“United States” means the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands and any other territory, possession, or commonwealth of the United States.


§ 4004. Establishment of National Council

(a) Establishment

There is established the National Fish and Seafood Promotional Council.

(b) Composition

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

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

(c) Regional representation


(d) Voting members

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

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

(B) three members who reside in or do substantial fishing industry business in the Southeast region;
(C) three members who reside in or do substantial fishing industry business in the Pacific region;
(D) three members who reside in or do substantial fishing industry business in the Alaska region;
(E) two members-at-large with demonstrated expertise in fresh-water and inland commercial fisheries, at least one of whom is not a resident of the States of the Alaska, Pacific, Southeast, and Northeast regions; and
(F) one member-at-large who is either a person professionally engaged in the dissemination of information pertaining to the nutritional benefits and preparation of fish and fish products or a person who is a member of an organized labor union and has expertise in the United States fisheries.

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

(e) Term of office

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

(f) Chairman

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

(g) First meeting

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

(h) Compensation of members

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


Amendments

1988—Subsec. (d)(1)(E). Pub. L. 100–350 which directed the substitution of “, at least one of whom is not a resident of the States of the Alaska, Pacific, Southeast, and Northeast regions” for “and who are not residents of the States of the Alaska, Pacific, Southeast, or Northeast regions” was executed by substituting that phrase for “and who are not residents of the states of the Alaska, Pacific, Southeast, or Northeast regions”.

Continuity of National Council Membership

Pub. L. 101–627, title VII, § 704(a), (b), Nov. 28, 1990, 104 Stat. 4464, provided that:

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

“(b) Filling of Vacancies.—Notwithstanding section 206(e) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4005 (e)), any vacancy on the National Fish and Seafood Promotion Act [Promotional Council] not filled as of September 30, 1990, shall be filled within 60 days after the date of enactment of this Act [Nov. 28, 1990].”
§ 4005. Functions and duties of National Council

(a) Functions and duties

The National Council shall—

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

(2) prepare and submit to the Secretary, for the Secretary’s review and approval, an annual budget of the anticipated expenses and disbursements of the National Council, including probable costs of consumer education, research, and other marketing and promotion plans or projects, and referenda under section 4009 of this title;

(3) maintain accounting records of the receipt and disbursement of all funds entrusted to the National Council, subject to the Secretary’s right to review or inspect such records;

(4) maintain such books and records as the Secretary determines appropriate; and

(5) prepare and submit to the Secretary from time to time such reports or proposals as the Secretary or the National Council determines appropriate for furthering the purposes and policies of this chapter.

(b) Annual plan

Each annual marketing and promotion plan shall be directed to—

(1) increasing the general demand for fish and fish products;

(2) encouraging, expanding, or improving the marketing and promotion and utilization of fish and fish products; and

(3) improving the dissemination of data collected by consumer education, research, and other marketing promotion activities.

(c) Prohibition on certain references

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

(d) Executive director

The National Council may employ and determine the salary of an executive director, but such salary shall not exceed Senior Executive Service Level 6. The executive director shall have demonstrated expertise in the marketing and promotion of food products and may, without regard to the provisions of title 5, with the approval of the National Council, select and employ additional staff as necessary.

(e) Funding of referendum

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

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

(g) Termination of National Council

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


References in Text

Senior Executive Service, referred to in subsec. (d), see section 5382 of Title 5, Government Organization and Employees.

Amendments


Continuity of Council Functions, Contracts, and Personnel

Section 705 of Pub. L. 101–627 provided that: “All current functions, contracts in force, and existing personnel of the National Fish and Seafood Promotional Council as of September 30, 1990, are reauthorized and extended, and shall continue as if uninterrupted, notwithstanding section 206(g) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4005 (g)) as in effect on September 30, 1990.”

......................................................................................................................

§ 4006. Duties of Secretary with regard to National Council

(a) Duties of Secretary

The Secretary shall—

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

(b) Withdrawal of funds

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


Amendments


......................................................................................................................
§ 4007. Voluntary payments

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


§ 4008. Establishment of Fisheries Promotional Fund

(a) Establishment of Fund

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

(b) Deposits

There shall be deposited in the Fund—

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

(c) Deposits and investments

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

(d) Authorization

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


Codification


Amendments


§ 4009. Establishment of seafood marketing councils

(a) Application

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

---------
(b) Form of application

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

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

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

(c) Contents of charter

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

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

(d) Review of charter

(1) Within 180 days of the receipt of an application to establish a council, the Secretary shall—
(A) identify, to the extent practicable, those sector participants that meet the requirements for eligibility to participate in the referendum under subsection (e) of this section;
(B) determine, to the extent practicable, if the charter is accompanied by a petition comprised of the signatures or corporate certifications, as the case may be, of no less than three sector participants in each sector identified in accordance with subsection (b)(5) of this section who collectively accounted for, in the twelve-month period immediately preceding the month in which the application was filed, not less than 10 percent of the value of the fish or fish products described in accordance with subsection (b)(3) of this section that were handled by each such sector during that period; and
(C) determine if the proposed charter is consistent with the provisions of this chapter and any other applicable law.

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

(e) Conduct of referendum

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

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

(A) publish (by such means as will result in wide publicity in regions affected by the proposed charter) the text of the proposed charter and a list of those sector participants eligible to vote in the referendum; and
(B) provide for public comment, including the opportunity for a public meeting.

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

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

(f) Nominations

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

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

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

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

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

(g) Nature of a council

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


....................................

§ 4010. Functions and powers of councils

(a) Activities of a council

(1) Each council shall—

   (A) Adopt a seal which shall be judicially noticed;
   (B) implement all terms of its charter;
   (C) prepare and submit to the Secretary, for review and approval under section 4011 (a)(1) of this title, a marketing and promotion plan and amendments to such plan which contain descriptions of the projected consumer education, research, and other marketing and promotion activities of the council;
   (D) implement and administer an approved marketing and promotion plan and amendments to such plan;
   (E) determine the assessments to be made under section 4012 of this title and administer the collection of such assessments to finance council expenses described in paragraph (2) of this subsection;
   (F) receive, investigate and report to the Secretary accounts of violations of rules or orders relating to assessments collected under section 4012 of this title, or quality standard requirements established under subsection (c) of this section;
   (G) prepare and submit to the Secretary, for review and approval under section 4011 (a)(1) of this title, a budget (on a fiscal year basis) of the anticipated expenses and disbursements of the council, including—

      (i) all administrative and contractual expenses;
      (ii) the probable costs of consumer education, research, and other marketing and promotion plans or projects;
      (iii) the costs of the collection of assessments; and
      (iv) the expense of repayment of the costs of each referendum conducted in regard to the council;
(H) maintain books and records, prepare and submit to the Secretary such reports from time to time as may be necessary for appropriate accounting with respect to the receipt and disbursement of funds entrusted to it, and cause a complete audit report to be submitted to the Secretary at the end of each fiscal year;

(I) reimburse the Secretary for the expenses incurred for the conduct of the referendum to establish the council or any subsequent referendum to terminate the council that fails; and

(J) prepare and submit to the Secretary from time to time such reports or proposals as the council determines appropriate to further the purposes of this chapter.

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

(A) research, consumer education, and other marketing and promotion activities regarding the quality and marketing of fish and fish products;

(B) other expenses, as described in subsection (a)(1)(G) of this section;

(C) such other expenses for the administration, maintenance, and functioning of the council as may be authorized by the Secretary;

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

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

(4) Consumer education and other marketing and promotion activities carried out by a council under a marketing and promotion plan and amendments to such plan may not contain references to any private brand or trade name and shall avoid the use of deceptive acts or practices in promoting fish or fish products or with respect to the quality, value, or use of any competing product or group of products.

(b) Authority of a council

A council may—

(1) sue and be sued;

(2) enter into contracts;

(3) employ and determine the salary of an executive director who may, with the approval of the council, employ and determine the salary of such additional staff as may be necessary;

(4) collaborate with other councils and with the National Council in establishing and implementing a national marketing and promotion plan for one or more species of fish or fish products; and

(5) establish a reserve fund from monies collected and received under section 4012 of this title to permit an effective and sustained program of research, consumer education, and other marketing and promotion activities regarding the quality and marketing of fish and fish products in years when production and assessment income may be reduced, but the total reserve fund may not exceed the amount budgeted for the current fiscal year of operation.

(c) Quality standards

(1) A council may develop and submit to the Secretary for approval, or upon the request of a council the Secretary shall develop, quality standards for a fish or fish product described in accordance with section 4009(b)(3) of this title. Any quality standard developed under this paragraph shall be consistent with the purposes of this chapter.

(2) A quality standard developed under paragraph (1) of this subsection may be adopted by a council by a majority of the members of the council if first approved, in a referendum conducted
by the council, by a majority of the sector participants of the sector concerned voting and the majority collectively accounted for, in the twelve-month period immediately preceding the month in which the referendum is held, not less than sixty-six percent of the value of the fish or fish products described in accordance with section 4009 (b)(3) of this title that were handled by that sector during such period.

(3) With respect to a quality standard adopted under paragraph (2) of this subsection, the council shall develop and file with the Secretary an official identification in the form of a symbol, stamp, label, or seal that will be used to indicate that a fish or fish product meets the quality standard at the time the official identification is affixed to the fish or fish product, or is affixed to or printed on the packaging material of the fish or fish product.

(4) The Secretary shall establish by regulation procedures for the use of an official identification filed with the Secretary under paragraph (3) of this subsection. Misuse of an official identification established under this section shall constitute a violation of this chapter.

(5) Prior to issuing final regulations under paragraph (4) of this subsection, the Secretary shall—
   (A) publish the proposed regulations by such means as will result in wide publicity in affected regions; and
   (B) provide for public comment and the opportunity for a public hearing.

(6) A council may receive, investigate and report to the Secretary accounts of violations of regulations issued under paragraph (4) of this subsection.

(7) Any regulation issued under paragraph (4) of this subsection shall be repealed immediately by the Secretary upon the termination under section 4015 of this title of the council that developed the official identification to which the regulations apply.

(8) The procedures applicable to the adoption and the taking effect of a quality standard developed under this subsection also apply to a subsequent amendment or the termination of such standard.

(d) Amendment of a charter

A council may submit to the Secretary amendments to the text of the council’s charter. Any proposed amendments to a charter shall be approved or disapproved in the same manner as the original charter was approved under section 4009 (d) and (e) of this title, with the exception of section 4009 (d)(1)(B) of this title.

Footnotes

1 So in original. Probably should not be capitalized.


§ 4011. Functions and powers of Secretary

(a) Duties of the Secretary

In addition to the duties prescribed under section 4009 of this title, the Secretary shall—

(1) review, for consistency with the provisions of this chapter and other applicable law, and approve or disapprove, marketing and promotion plans and budgets within sixty days after their submission by a council;

(2) immediately notify a council in writing of the disapproval of a marketing and promotion plan or budget, together with reasons for such disapproval;

(3) issue orders and amendments to such orders that are necessary to implement quality standards under section 4010 (c) of this title;

(4) promulgate regulations necessary to carry out the purposes of this chapter;

(5) enforce the provisions of this chapter, as provided under section 4016 of this title; and

(6) make all appointments to councils in accordance with section 4009 (f) of this title.
§ 4012. Assessments

(a) Authority

A council shall impose and administer the collection of the assessments that are necessary to pay for all expenses incurred by the council in carrying out its functions under this chapter.

(b) Method of imposition

(1) Assessments shall be imposed on sector participants in the receiving sector or the importing sector, or both, as specified in an approved council charter.

(2) An assessment on sector participants in the receiving sector shall be—

(A) except for an owner of a fish processing vessel, in the form of a percentage of the value of the fish described in accordance with section 4009 (b)(3) of this title when purchased by such participants from fish harvesters; and

(B) for an owner of a fish processing vessel, in the form of a percentage of the value of the fish described in accordance with section 4009 (b)(3) of this title and harvested by such a vessel that is no less than the value of such fish, if such fish had been purchased by a receiver other than an owner of such a vessel.

(3) An assessment on sector participants in the importing sector shall be in the form of a percentage of the value, as determined for the purposes of the customs laws, of the fish or fish products described in accordance with section 4009 (b)(3) of this title when entered, or withdrawn from warehouse for consumption, in the customs territory of the United States by such sector participants.

(c) Prohibition on assessment

A council may not impose an assessment on any person that was not eligible to vote in the referendum establishing the council under section 4009 (e) of this title by reason of failure to meet the requirements specified under section 4009 (b)(6) of this title, unless such person, after the date on which such referendum is held, meets the requirements of section 4009 (b)(6) of this title.

(d) Voluntary payments

Any person may make voluntary payments or in-kind contributions to a council for purposes of assisting the council in carrying out its functions.

(e) Deposit of funds

All funds collected or received by a council under this section shall be deposited by the council in an appropriate account in the name of the council specified in its charter. Funds eligible to be collected or received by a council shall be limited to those authorized under this section.

(f) Information

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

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

(3) This subsection shall not prohibit—

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

(B) the publication by direction of the Secretary of the name of any person violating a requirement relating to an assessment imposed under subsection (a) of this section or to quality standards implemented by the Secretary under section 4010 (c) of this title, and a statement of the particular provisions of the requirement violated by such person.

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

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

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


-------------------------------

§ 4013. Petitions

(a) Filing of petition

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

(1) the assessment,

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

(3) any obligation imposed under the plan,

is not in accordance with law and requesting the Secretary to modify or take other appropriate action regarding the assessment or plan.

(b) Form of petition

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


-------------------------------

§ 4014. Refunds

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

§ 4015. Termination of a council

(a) Petition for termination

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

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

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

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

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

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

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

(b) Payment of remaining funds

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

§ 4016. Enforcement

(a) Authority

(1) The district courts of the United States shall have jurisdiction specifically to enforce and to prevent and restrain any person from violating any assessment, order or regulation made or issued under this chapter.

(2) (A) If a council has reason to believe that a person subject to an assessment, order or regulation made or issued under this chapter is violating such assessment, order or regulation, it may refer the matter to the Secretary.

(B) Except as provided in subparagraphs (C) or (D) of this paragraph, any civil action authorized to be brought under this subsection, when referred by a council under subparagraph (A) of this paragraph, shall be referred to the Attorney General for appropriate action.

(C) If the Secretary believes that the administration and enforcement of the provisions of this chapter would be adequately served by taking administrative action under subsection (b) of this section or by providing written notice or warning to any person committing a violation of this chapter, the Secretary is not required to refer such violation to the Attorney General.

(D) Whenever a matter has been referred by a council under subparagraph (A) of this paragraph and the Secretary or the Attorney General fails within 60 days of such referral to take appropriate action, the council may, upon filing notice with the Secretary or Attorney General, as appropriate, and other interested parties, bring an action in its own name.

(b) Recovery of costs

(1) (A) When a council brings an action under subsection (a)(2) of this section, the council may recover costs of litigation and, where the action is brought to collect an unpaid assessment, interest from the date the amount became due and payable.

(B) Any person who violates any provision of an order (including a cease and desist order previously issued under this paragraph) or regulation issued by the Secretary under this chapter, or who fails or refuses to pay, collect, or remit any assessment required under this chapter, may be assessed a civil penalty by the Secretary of not less than $500 nor more than $5,000 for each such violation. Each violation shall be a separate offense. In addition to, or in lieu of, a civil penalty under this subparagraph, the Secretary may issue an order requiring such person to cease and desist from continuing such violation.

(C) No penalty shall be assessed, or cease and desist order issued, under this paragraph unless the affected person is given notice and opportunity for a hearing before the Secretary with respect to such violation.

(D) Any order of the Secretary under this paragraph assessing a penalty or imposing a cease and desist order shall be final and conclusive, unless the affected person files an appeal from the Secretary’s order with the appropriate United States court of appeals.

(2) (A) Any person against whom a violation is found under paragraph (1) of this subsection may obtain review of such action in the United States court of appeals for the circuit in which such person resides or has his place of business, or in the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within thirty days after the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary.

(B) The Secretary shall promptly file in the court a certified copy of the record upon which such violation was found.

(C) The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence or not in accordance with law.
(3) (A) If any person fails to pay a civil penalty under this subsection after it has become final, the Secretary shall refer the matter to the Attorney General.

(B) The Attorney General shall institute appropriate action to recover the amount assessed under this subsection in a district court of the United States.

(C) If, within sixty days after such referral, the Attorney General fails to institute such appropriate action, the council to whose programs the assessment, order or regulation relates may institute an action in its own name.


§ 4017. Investigations

(a) Authority to make investigations

The Secretary may make such investigations as the Secretary determines necessary to—

(1) carry out the Secretary’s responsibilities under this chapter; and

(2) determine whether any person has engaged in any act or practice which constitutes a violation of the provisions of this chapter.

(b) Oaths and affirmations

For the purpose of investigations under subsection (a) of this section, the Secretary may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents which are relevant to the inquiry. The attendance of such witnesses and the production of any such records may be required from any place in the United States.

(c) Court orders

In case of contumacy or refusal to obey a subpoena issued under this section by any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or has his business, to require the attendance and testimony of witnesses and the production of books, papers, and documents. Such court may issue an order requiring such person to appear before the Secretary to produce records or to give testimony relating to the matter under investigation.